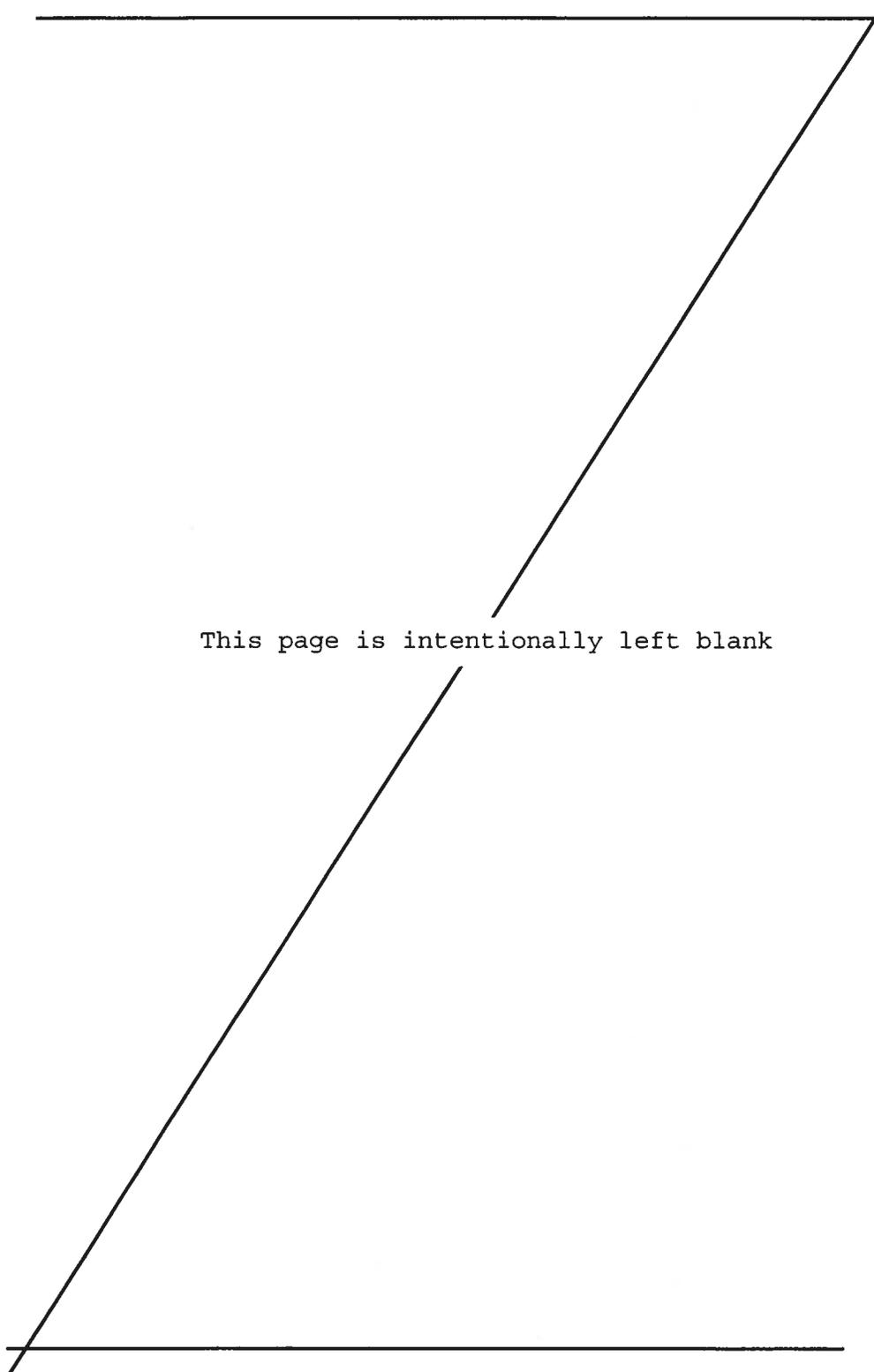


Rules Amending and Compiling Chapter 10

Rules of the Section 8 Housing Assistance Programs

1. Chapter 10 of the Rules and Regulations of the Section 8 Housing Assistance Programs of the Department of Community Services, City and County of Honolulu, entitled "Rules of Practice and Procedures of the Section 8 Tenant Based Rental Assistance and Moderate Rehabilitation Programs," is amended and compiled.



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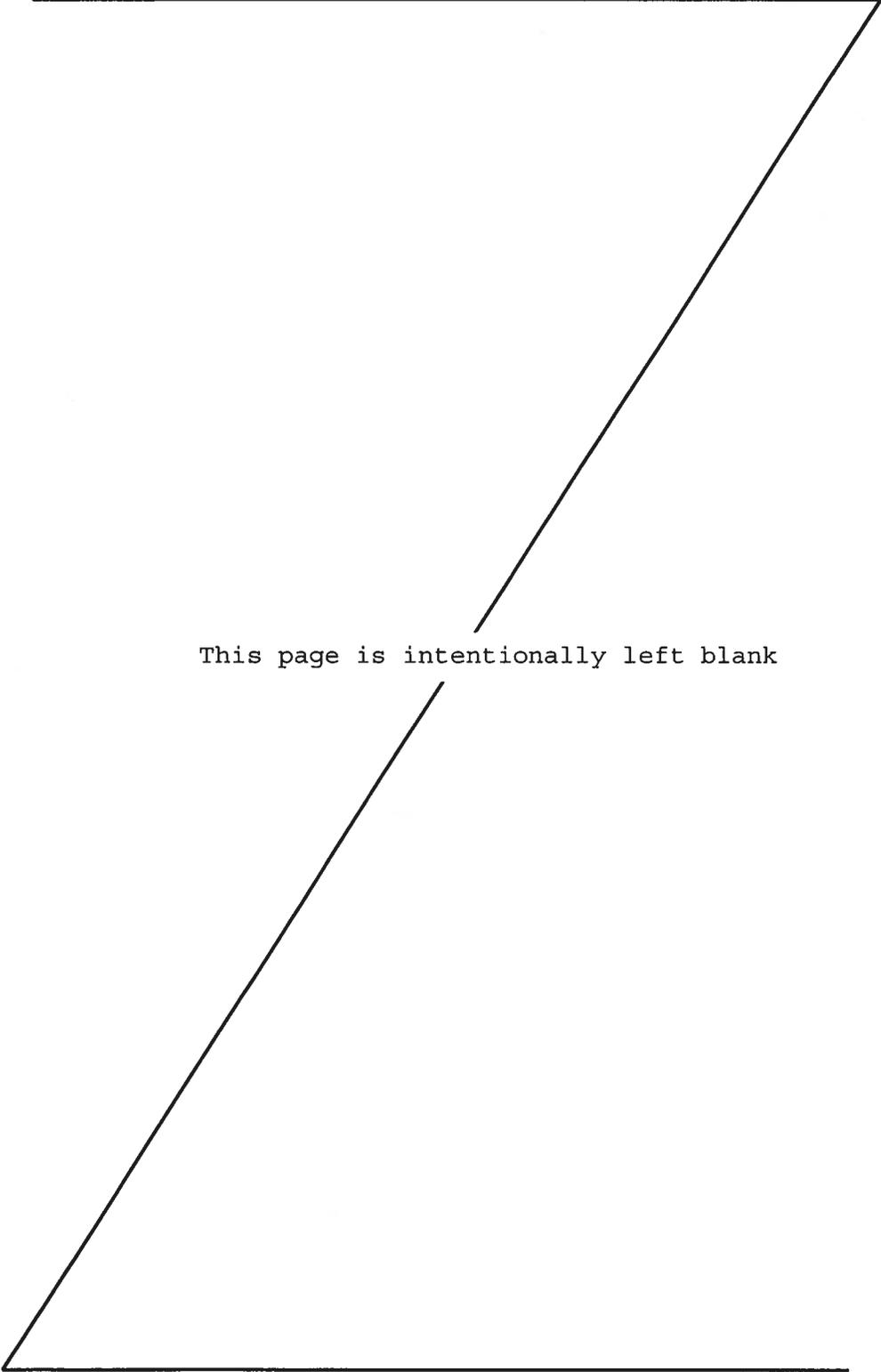
TITLE 8

DEPARTMENT OF COMMUNITY SERVICES

CHAPTER 10

SECTION 8 TENANT BASED RENTAL ASSISTANCE AND MODERATE  
REHABILITATION PROGRAMS

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**§8-10-1 Purpose.** These rules are adopted under the Hawai'i Administrative Procedure Act, Chapter 91, Hawai'i Revised Statutes, as amended, pursuant to Ordinance of the City and County of Honolulu, and are intended to set forth the essential elements to implement the City and County of Honolulu, Housing Choice Voucher or Section 8 Rental Assistance Program, as established in Title 24 of the Code of Federal Regulations, Parts 1, 5, 8, 882, 888, and 982. Nothing in these rules shall supersede the provisions of C.F.R. Parts 1, 5, 8, 882, 888, and 982 and any revisions or amendments thereto. [Eff 10/20/03; §1-1; am, ren §8-10-1 and comp 11/23/12; am and comp 8/18/17; comp **JAN 10 2021**] (Auth: RCH §§4-105.4, 6-302, ROH §1-9.1) (Imp: RCH §6-302; ROH §6-23.3; 24 C.F.R. Parts 1, 5, 8, 882, 888 and 982)

**§8-10-2 Definitions.**

Unless otherwise clear from the context as used in this Chapter 8-10:

"Act" means the United States Housing Act of 1937 (42 U.S.C. 1437f), as amended.

"Adjusted Income" means the Annual Income less:

- (1) \$480 for each dependent;
- (2) \$400 for any Elderly Family or Disabled Family;
- (3) Unreimbursed medical expenses for any Elderly Family or Disabled Family and unreimbursed reasonable attendant care and auxiliary apparatus expenses for a Person with Disabilities as allowed in 24 C.F.R. 5.611(a)(3).
- (4) Child care expenses.

"Administrative Fee Reserve" means the account to which is credited the excess administrative fees earned by the Agency in prior years. Such funds may be used for housing purposes other than the Section 8 Housing Assistance Payments Program.

"Agency" means the Department of Community Services, City and County of Honolulu.

"Annual Contributions Contract" or "ACC" means a written agreement between the federal Department of Housing and Urban Development (HUD) and the Agency to provide funding to cover housing assistance payments and other related expenses. Also known as a Consolidated ACC when

more than one increment of units is funded simultaneously with one written agreement.

"Annual Income" means the anticipated total annual income of a Family from all sources for a 12-month period following the date of determination of income, computed in accordance with Section 8-10-6.

"Applicant" or "Applicant Family" means a Family that has applied for admission to the Program, but is not yet a participant in the Program.

"Assets" has the meaning set forth in Section 8-10-6.

"Certificate Program" means a Section 8 Tenant Based Rental Assistance Program, or Section 8 Existing Housing Assistance Payments Program that existed prior to October 1, 2001.

"C.F.R." or "Code of Federal Regulations" means the federal publication, which contains regulations governing, among other things, the HUD and Tenant Based Section 8 Rental Assistance and Moderate Rehabilitation Programs, as may be amended from time to time.

"Child Care Expenses" means amounts anticipated to be paid by the Family for the care of children under thirteen years of age during the period for which Annual Income is computed, but only where such care is necessary to enable a Family member to seek employment actively, to be gainfully employed, or to further his or her education, but only to the extent such amounts are not reimbursed. The amount shall reflect reasonable charges for child care. In the case of child care necessary to permit employment, the amount shall not exceed the amount of employment income that is included in Annual Income.

"Co-Head of Household" means the spouse and/or one other adult member in the Family who shares responsibility with the Head of Household for the Lease and who is included for purposes of determining income eligibility and rent.

"Complainant" means an applicant, Participant or Participant Family who has requested a review or hearing in writing due to dissatisfaction with the Agency's action or inaction. A Complainant with a court appointed guardian of the person shall be considered to be represented by the guardian. The guardian shall have all the rights and duties of the incapacitated complainant.

"Continuously Assisted Family" means an Applicant Family that is already receiving assistance under any 1937 Housing Act Program when the Family is admitted to the Housing Choice Voucher Program.

"Day(s)" means calendar days, unless otherwise provided by statute or rule. In computing any period of time as allowed by these rules, the day of the act, event or default after which the designated period of time is to run, shall not be included. The last day of the period so computed shall be included unless it is a Saturday, Sunday, or legal holiday in the City and County of Honolulu, in which event the period runs until the next day which is neither a Saturday, Sunday, or holiday.

"Dependent" means a member of the Family (except foster children and foster adults) other than the Head of Household or spouse, who is under eighteen (18) years of age or is a Person with a Disability, or is a Full-time Student.

"Disabled Family" means a Family whose head, spouse or sole member is a Person with Disabilities, as defined in 24 C.F.R. 5.403. It may include two or more Persons with Disabilities living together; or one or more Persons with Disabilities living with one or more Live-in Aides.

"Displaced Family" means a Family in which each member, or whose sole member, is a person displaced by governmental action, or a person or Family whose dwelling has been extensively damaged or destroyed as a result of a disaster declared or otherwise formally recognized pursuant to federal disaster relief laws.

"Drug Related Criminal Activity" has the meaning set forth in Section 8-10-23(c)(16).

"Earned Income Disallowance" or "EID" means a program that allows eligible Participant Persons with Disabilities who have been out of work to accept a job without increasing the Family Share, as stated in Section 8-10-19(e), Interim Reexamination.

"Elderly Family" means a Family whose head, spouse, or sole member is a person who is at least sixty-two years of age. It may include two or more persons who are at least sixty-two years of age living together, or one or more persons who are at least sixty-two years of age living with one or more Live-in Aides.

"Extremely Low Income Family" means a Family whose Annual Income does not exceed thirty per cent of the median income for the area as determined by HUD, with adjustments for unusually high or low Family Income.

"Fair Market Rent" or "FMR" means the rent, including the cost of utilities (except telephone, cable and satellite TV), as established by HUD for units of varying sizes (by number of bedrooms), that must be paid in the

housing market area to rent privately owned, existing, decent, safe and sanitary housing of modest (non luxury) nature with suitable amenities. See periodic publications in the Federal Register in accordance with 24 C.F.R. Part 888.

"Family" or "Families" means two or more persons intending to or sharing residency whose income and resources are available to meet the family's needs; a Disabled Family; a Displaced Family; an Elderly Family; a Remaining Member of a Participant Family; or a Single Person. A Family may or may not be a Participant in the Program as the context may prescribe.

"Family Income" has the meaning set forth in Section 8-10-6.

"Family Rent to Owner" means the amount payable monthly by the Family as rent to the unit owner.

"Family Share" means the amount the Family pays monthly toward rent and allowance for utilities.

"Family Self Sufficiency Program" or "FSS Program" means a program established by the Agency and described in Chapter 11 of the Agency's Section 8 Housing Assistance Program Rules to promote self-sufficiency among Participant Families.

"Full-time Student" means a person who is in full-time attendance (equal to a full-time day student) under the standards and practices of a qualified educational institution he or she is attending.

"Gross Rent" means the sum of Rent to Owner plus any Utility Allowance.

"Head of Household" means the adult member or emancipated minor of the Family who is the head of household for purposes of determining income eligibility and rent and is responsible for the Lease.

"Homeownership Option Program" means a program established by the Agency and described in Chapter 12 of the Agency's Section 8 Housing Assistance Program Rules. A special housing type of assistance for a homeowner or cooperative member under 24 C.F.R. 982.625 - 982.641.

"Housing Assistance Payments" or "HAP" means the monthly assistance payment by the Agency, which includes:

A payment to the Owner for Rent to Owner under the Family's Lease; and

An additional payment to the Family if the total assistance payment exceeds the Rent to Owner.

"Housing Assistance Payments Contract" or "HAP Contract" means a written agreement between the Agency and

an Owner for the purpose of providing housing assistance payments to the Owner under the Section 8 Tenant Based Rental Assistance and Moderate Rehabilitation Programs on behalf of the Family.

"Housing Choice Voucher Program" means a Section 8 Rental Assistance Program.

"Housing Quality Standards" or "HQS" means the HUD minimum quality standards for housing assisted under the tenant based programs set forth in 24 C.F.R. Sections 982.401-.406.

"HUD" means the United States Department of Housing and Urban Development or its designee.

"Initial PHA" means, with respect to Portability, both: 1) a PHA that originally selected a Family that later decides to move out of the jurisdiction of such selecting PHA, and 2) a PHA that absorbed a Family that later decides to move out of the jurisdiction of such absorbing PHA.

"Lease" means a written agreement between an Owner and a tenant for the leasing of a dwelling unit to the Family. The Lease establishes the conditions for occupancy of the dwelling unit by a Family with Housing Assistance Payments under a HAP Contract between the Owner and the PHA.

"Live-in Aide" means a person who resides with one or more persons who is either sixty-two years of age or older or a Person with Disabilities, and who a) is determined to be essential to the care and well-being of the persons, b) is not obligated to provide for the support of the persons and c) would not be living in the unit except to provide the necessary supportive services.

"Low Income Family" means a Family whose Annual Income does not exceed eighty per cent of the median income for an area as determined by HUD, with adjustments for unusually high or low Family Income.

"Medical Expenses" means those medical expenses, including medical insurance premiums, which are anticipated during the period for which the Annual Income is computed, and that are not covered by insurance or otherwise reimbursed.

"Moderate Rehabilitation Program" means a type of project based Certificate Program. All provisions in Chapter 8-10 apply unless otherwise prescribed in 24 C.F.R. Part 882.

"Monthly Adjusted Income" means one twelfth of Adjusted Income.

"Monthly Income" means one-twelfth of the Annual Income.

"Owner" or "Landlord" means any person or entity, including a cooperative, having the legal right to lease or sub-lease units to Participants.

"Participant" or "Participant Family" means a Family that has been admitted to the Agency's Program and is currently assisted.

"Payment Standard" means the maximum monthly assistance payment for a Family assisted in the Voucher Program (before deducting the Total Tenant Payment by the Family).

"Person with Disabilities" means a person with disabilities as defined under 24 C.F.R. 5.403.

"Portability" means renting a dwelling unit with Section 8 tenant-based assistance outside the jurisdiction of the Initial PHA.

"Program" means Voucher Program.

"Public Housing Agency" or "PHA" means any state, county, municipality or other governmental entity or public body (or agency or instrumentality thereof) which is authorized to engage or assist in the development or operation of housing for Low Income Families.

"Reasonable Rent" means a Rent to Owner that is not more than rent charged for a) comparable units in the private unassisted rental market and b) comparable unassisted units in the same premises.

"Receiving PHA" means, with respect to Portability, a PHA that receives a Family selected for participation in the tenant-based program of another PHA. The receiving PHA issues a Voucher and provides program assistance to the Family.

"Remaining Member of a Participant Family" means the last adult Family member remaining in a unit. This does not include a Live-in Aide, or a foster child or foster adult.

"Rent to Owner" (formerly known as Contract Rent) means the total monthly rent payable to the Owner under the Lease for the unit. Rent to Owner covers payment for any housing services, maintenance and utilities that the Owner is required to provide and pay for.

"Section 8 Tenant Based Voucher Program" means a Housing Choice Voucher Program or Voucher Program.

"Section 8 Project Based Voucher Program" means a Housing Choice Voucher Program administered by the Agency pursuant to 24 C.F.R. Part 983 which provides assistance attached to specific units for a specified period of time.

"Single Person" means a person living alone or intending to live alone who does not qualify as an Elderly Family, Disabled Family, Displaced Family, or the Remaining Member of a Participant Family.

"Special Admissions" means admission of an Applicant that is not on the Waiting List or without considering the Applicant's Waiting List position.

"Tenant" means an individual or a Family renting or occupying an assisted unit.

"Total Tenant Payment" or "TTP" means the highest of: (1) thirty per cent of the Family's Monthly Adjusted Income; (2) ten per cent of the Family's monthly gross income, rounded to the nearest dollar; or (3) the minimum rent, as determined in accordance with Section 8-10-16(a)(1).

"Utility Allowance" means an amount equal to the estimate established by the Agency for all tenant-paid utilities (except non-essential utility costs, including, without limitation, telephone and cable and satellite television), for cost of tenant-supplied refrigerators and ranges, and for other tenant-paid housing services (e.g., trash collection (disposal of waste and refuse)) and is based on the customary cost of utilities and services paid by energy conservative households of modest circumstances that occupy housing of similar size and type in the same locality and complies with decent, safe, and sanitary housing.

"Very Low Income Family" means a Family whose Annual Income does not exceed fifty per cent of the median income for an area as determined by HUD, with adjustments for unusually high or low Family Income.

"Violation of the Lease" means either of the following violations:

- (1) "Serious Violation" means the intentional or unintentional breach of the Lease or other signed document that results in the Owner's or Landlord's reasonably filing suit for eviction.
- (2) "Repeated Violation" means repeated infraction of the Lease or other signed document, that results in the Owner's or Landlord's reasonably filing suit for eviction.

"Violence Against Women Act" or "VAWA" means the Violence Against Women Act, as amended, 42 U.S.C. 13925 and 42 U.S.C. 14043e et seq., 24 C.F.R. part 5, subpart L.

"Voucher" means a document issued by a PHA declaring a Family to be eligible for participation in the Housing

Choice Voucher Program and stating the terms and conditions for the Family's participation.

"Voucher Program" means a Section 8 Rental Assistance Program, or the Housing Choice Voucher Program. Includes the Moderate Rehabilitation Program unless otherwise provided in 24 C.F.R. Part 882.

"Waiting List" means the compiled names of preliminarily eligible applicants waiting to become participants in the Agency's Section 8 Rental Assistance Programs.

"Welfare Assistance" means welfare or other payments to Families or individuals, based on need, that are made under programs funded separately or jointly by the federal and/or state governments. [Eff 10/20/03; §1-2; am 5/28/04; am 12/7/07; am, ren §8-10-2 and comp 11/23/12; am and comp 8/18/17; am and comp **JAN 10 2021** ] (Auth: RCH §§4-105.4, 6-302, ROH §1-9.1) (Imp: RCH §6-302; ROH §6-23.3; 24 C.F.R. §982.4(b))

### **§8-10-3 General Applicability and Scope.**

The policies and procedures contained herein are applicable to the making of Housing Assistance Payments on behalf of eligible Families leasing housing pursuant to the provisions of Section 8 of the United States Housing Act of 1937. To implement the Section 8 Tenant Based Rental Assistance and Moderate Rehabilitation Programs, the Agency, with the approval of HUD, is authorized to lease or cause to be leased to eligible Families units that are in decent, safe and sanitary condition.

Funding is provided by HUD through the issuance of ACCs or a Consolidated ACC which pledge monies for a specified period. The PHA earns administrative fees for each unit that is leased. Administrative fees are used to provide for program administration and operation of the PHA. Administrative fees, which are earned but not spent during a given year, are credited to an Administrative Fee Reserve at the end of that year. If funds are not needed to cover the Agency administrative expenses through the end of HUD's funding commitment under the Consolidated ACC, expenditures from the Administrative Fee Reserve may be used only for other housing purposes and shall not exceed \$400,000 for each fiscal year. Expenditures that exceed \$400,000 for each fiscal year shall require the approval of the Managing Director of the City and County of Honolulu.

However, HUD may prohibit the use of Administrative Fee Reserve funds for specified purposes. [Eff 10/20/03; §1-3; am, ren and comp 11/23/12; am and comp 8/18/17; comp JAN 10 2021 ] (Auth: RCH §§4-105.4, 6-30 2, ROH §1-9.1) (Imp: RCH §6-302; ROH §6-23.3; 24 C.F.R. §982.2)

**§8-10-4 Public Notice to Low Income, Very Low Income and/or Extremely Low Income Families.** (a) Notice of Availability of Housing Assistance and Reopening of the Waiting List. The Agency shall make known to the public through publication in a newspaper of general circulation, minority media, and other suitable means, the reopening of the Waiting List or the availability and nature of housing assistance for Low Income, Very Low Income and Extremely Low Income Families. The notice shall further inform such Families where and when to apply and state any limitations on who may apply for available slots in the Program.

(b) Notice in Accordance with HUD Guidelines. Such notice shall comply with HUD fair housing requirements. [Eff 10/20/03; §1-4; am, ren §8-10-4 and comp 11/23/12; am and comp 8/18/17; comp JAN 10 2021 ] (Auth: RCH §§4-105.4, 6-302, ROH §1-9.1) (Imp: RCH §6-302; ROH §6-23.3; 24 C.F.R. §982.206(a))

**§8-10-5 Public Notice and Invitation to Owners.**

(a) Invitation to Owners. The Agency shall invite Owners through publication in a newspaper of general circulation and other suitable means to make dwelling units available for lease by eligible Families. In so doing, the Agency shall encourage the participation of Owners of units in areas other than low-income or minority concentration.

- (b) Contact with Organizations. The Agency shall:
- (1) Develop working relationships with local Owners and real estate associations;
  - (2) Establish contact with civic, charitable, and neighborhood organizations and public agencies which have an interest in housing for Low Income Families, and which are concerned with obtaining housing for displacees;
  - (3) Explain the provisions of the Program, including equal opportunity requirements, to real estate associations, landlords, and other groups the

members of which have dealings with Low Income Families or are interested in housing such Families; and

- (4) Request the HUD field office and the State of Hawaii housing agency to furnish a list of their properties available for rent to Families.

[Eff 10/20/03; §1-5; am, ren §8-10-5 and comp 11/23/12; am and comp 8/18/17; comp **JAN 10 2021** ] (Auth: RCH §§4-105.4, 6-302, ROH §1-9.1) (Imp: RCH §6-302; ROH §6-23.3; 24 C.F.R. §982.54)

**§8-10-6 Family Income.** (a) Annual Income means all amounts and benefits, monetary or otherwise, which:

- (1) Go to, or on behalf of, the Head of Household, Co-Head of Household or to any other member of the Family (even if any of them are absent); and
- (2) Are anticipated to be received by the Family during the twelve month period following admission to the Program or the annual reexamination effective date; and
- (3) Are not specifically excluded in subsection (d).

(b) Annual Income includes, but is not limited to:

- (1) The full amount, before any payroll deductions, of wages and salaries, overtime pay, commissions, fees, tips and bonuses, and other compensation for personal services.
- (2) All regular pay, special pay and allowances of a Family member in the Armed Forces, whether or not such member is living in the unit.
- (3) The net income from the operation of a business or profession. Expenditures for business expansion or amortization of capital improvements shall not be used as deductions in determining net income. An allowance for depreciation of Assets used in a business or profession may be deducted, based on straight line depreciation, as provided in Internal Revenue Service regulations. Any withdrawal of cash or Assets from the operation of a business or profession will be included in income, except to the extent the withdrawal is a reimbursement of cash or Assets invested in the operation by the Family.
- (4) Interest, dividends, and other net income of any kind from real or personal property and Assets,

as described below in subsection (e). Expenditures for amortization of capital improvement shall not be used as deductions in determining net income. An allowance for depreciation is permitted only as authorized in subsection (b)(3). Any withdrawal of cash or Assets from an investment will be included in income, except to the extent the withdrawal is reimbursement of cash or Assets invested by the Family. Where the Family has Assets in excess of \$5,000, Annual Income shall include the greater of the actual income derived from all such Assets or a percentage of the value of such Assets based on the current passbook savings rate, as determined by HUD.

- (5) Welfare Assistance, which includes payment to Families or individuals on the basis of economic need, age, family composition and size, health of recipient, and any other such financial benefit not specifically excluded under subsection (d). Reductions in public or Welfare Assistance from sanctions imposed by the welfare agency may continue to be counted as income even when the recipient is no longer receiving the income.
- (6) The full amount and benefits of periodic Social Security, Supplemental Security Income, the Veterans Administration, annuities, insurance policies, retirement funds, pensions, profit sharing, disability or death benefits, and other similar types of periodic receipts, including a lump-sum amount or prospective monthly amounts for the delayed start of a periodic amount (except as provided in subsection (d)(15)). For Participants, fixed income must be verified using third-party verification. In the second and third years, income may be adjusted by a Cost of Living Adjustment (COLA) or current interest rate obtained from a public source or from Participant-provided third-party generated documentation.
- (7) Payments in lieu of earnings, such as unemployment and disability compensation, worker's compensation, compensatory damages and severance pay (except as provided in subsection (d)(3)).

- (8) The amount of alimony and/or child support payments as specified in the divorce settlement or separation agreement unless the Family certifies the income is not being provided and has made reasonable effort to collect the amounts due by filing with the courts or agencies responsible for enforcing payment.
- (9) Periodic and determinable allowances, such as lottery winnings paid in periodic payments; recurring contributions or gifts regularly received from organizations or from persons not living in the unit; wagering and gambling; and other types of periodic receipts.
- (10) Anticipated amounts and benefits derived (during the twelve month period following admission or annual reexamination effective date) from Assets to which any member of the Family has access.

(c) Income from Temporarily Absent Family Members. Income from Family members who are temporarily absent from the household for a period of not more than one hundred eighty days will be included in the Family's income, even if part or all of their income is not available to the Family. Income of a temporarily absent Head of Household and spouse serving in the Armed Forces must be included as provided in subsection (b) (2).

(d) Annual Income Does Not Include. The following items shall not be considered as part of Annual Income:

- (1) Temporary, nonrecurring, or sporadic gifts;
- (2) Amounts received by the Family which are specifically for or in reimbursement of, the cost of medical expenses for any Family member;
- (3) One-time lump-sum additions to Family Assets, such as inheritances, insurance payments (including payments under health and accident insurance and worker's compensation), capital gains and settlement for personal or property losses (except as provided in subsection (b) (7));
- (4) The full amount of student financial assistance paid directly to the student who is a member of the Family or to the educational institution on behalf of the student;
- (5) The special pay to a Family member serving in the Armed Forces who is exposed to hostile fire;
- (6) Income from employment of children who are members of the Family (including foster children) under the age of eighteen years;

- (7) Earnings in excess of \$480 for each full time student who is a member of the Family eighteen years old or older (excluding the Head and Co-Head of Household);
- (8) Payments received for the care of foster children or foster adults (such individuals usually persons with disabilities, unrelated to the Family, who are unable to live alone);
- (9) Adoption assistance payments in excess of \$480 per adopted child;
- (10) Amounts received under training programs funded by HUD;
- (11) Amounts received by a Family member who is a Person with Disabilities that are disregarded for a limited time for purposes of Supplemental Security Income eligibility and benefits because such amounts are set aside for use under a Plan to Attain Self-Sufficiency (PASS), as defined in 24 C.F.R. 5.609;
- (12) Amounts received by a Family member in other publicly assisted programs which are specifically for or in reimbursement of out-of-pocket expenses incurred (special equipment, clothing, transportation, child care, etc.) and which are made solely to allow participation in a specific program;
- (13) Incremental earnings and benefits resulting to any Family member from participation in qualifying state or local employment training programs (including training programs not affiliated with a local government) and training of a Family member as resident management staff during the training period. Amounts excluded by this provision must be received under employment training programs with clearly defined goals and objectives, and are excluded only for the period during which the Family member participates in the employment training program;
- (14) Reparation payments paid by a foreign government pursuant to claims filed under the laws of that government by persons who were persecuted during the Nazi era;
- (15) Deferred periodic amounts from Supplemental Security Income (SSI) and Social Security benefits that are received in a lump sum or in prospective monthly amounts;

- (16) Amounts received by the Family in the form of refunds or rebates under state or local law for property taxes paid on the dwelling unit;
  - (17) Amounts paid by a state agency to a Family with a member who has a developmental disability and is living at home to offset the cost of services and equipment needed to keep the developmentally disabled Family member at home;
  - (18) Amounts received under a resident service stipend if it does not exceed \$200 per month. Amounts more than \$200 per month are not considered "Stipends." A resident service stipend is a modest amount received by a resident for performing a service for the PHA or Owner, on a part-time basis, which enhances the quality of life in the development. Such services may include, but are not limited to, fire patrol, hall monitoring, lawn maintenance, resident initiatives coordination, and serving as a member of the development's governing board. No resident may receive more than one such stipend during the same period of time;
  - (19) Income of Live-in Aides, as defined in Section 8-10-2;
  - (20) Amounts specifically excluded by any other federal statute from consideration as income for purposes of determining eligibility or benefits under a category of assistance programs, which includes assistance under any program to which the exclusions set forth in 24 C.F.R. 5.609(c) apply. A notice will be published in the *Federal Register* and distributed to PHAs and housing owners identifying the benefits that qualify for this exclusion. Updates will be published and distributed when necessary.
  - (21) Families eligible for EID are limited to a single consecutive twenty-four month period for the receipt of this benefit. All qualifying earned income within the straight twenty-four month period will be excluded.
- (e) Assets means all property owned that has value and is available to meet debts, commitments, or legacies, which include:
- (1) Amounts including, without limitation, amounts in checking accounts (average balance), savings accounts, safety deposit boxes, at home, etc.

- (2) Principal value of any trust available to the Family. In cases where a trust fund has been established and the trust is not revocable by, or under the control of, any member of the Family, the value of the trust fund will not be considered an asset so long as the fund continues to be held in trust. Any income distributed from the trust fund shall be counted when determining Annual Income under Section 8-10-6.
- (3) Equity in rental property or other capital investments. Equity is the estimated current market value of the asset less the unpaid balance on all loans secured by the Assets and any reasonable costs (such as broker fees) that would be incurred in selling such Assets.
- (4) Equity in real property and other contracts for purchase or sale of real property. The equity is the estimated market value less the unpaid balance on all loans secured by the Assets and any reasonable expenses that would be incurred in selling the property.
- (5) Stocks, bonds, savings certificates, Treasury Bills, certificates of deposit, money market funds, and other investment accounts.
- (6) Assets which, although owned by more than one person, allow unrestricted access by the Applicant.
- (7) Individual Retirement and Keogh Accounts, and similar retirement savings accounts, even though withdrawal would result in a penalty.
- (8) Company retirement, termination of employment, and/or pension funds if any member of the Family has access to said Asset, as follows:
  - (A) While the subject Family member is employed, include only the amount the Family member can withdraw without retiring or terminating employment.
  - (B) At retirement or termination of employment by the subject Family member, include the lump-sum benefit to be received as asset. Include as Family Income any benefits received through periodic payments.
- (9) Lump-sum receipts such as inheritances, capital gains, lottery winnings, cash from sale of Assets, Social Security and SSI lump sum payments, insurance settlements (including

payments under health and accident insurance and worker's compensation), settlement for personal or property losses, and other claims.

- (10) Personal property held as an investment, including, but not limited to, gems, jewelry, coin collections, art, antique cars, etc.
  - (11) Cash value of life insurance policies.
  - (12) The value of any business or Family Asset disposed of by an Applicant or tenant for less than fair market value (including a disposition in trust, but not in a foreclosure or bankruptcy sale or separation or divorce settlements where a court determines value) during the two years preceding the admission date to the Program or the effective date of the next reexamination.
  - (13) Value of a home currently being purchased with assistance under 24 C.F.R. Part 982, Subpart M, ten years after the purchase date of the home.
- (f) Assets do not include:
- (1) Interests in Indian trust land and equity accounts in HUD homeownership programs.
  - (2) The value of necessary items of personal property such as furniture and automobiles, unless such item is deemed by the Agency as for investment.
  - (3) The value of a home currently being purchased with assistance under 24 C.F.R. Part 982, subpart M, only during the first ten years after the purchase date of the home.
- (g) Period for Determining Annual Income.
- (1) Under normal circumstances, Annual Income shall be the projected amount anticipated by the Family for a twelve month period; or
  - (2) If the circumstances are such that it is not possible to anticipate a level of income over a twelve month period (e.g., seasonal or cyclic income), or if the Agency believes that past income is the best available indicator of expected future income, the Agency may annualize the income anticipated for a shorter period, subject to a redetermination at the end of the shorter period.
  - (3) At admission, the Family must provide third party verification of all Assets, or document why third party verification is not available. Assets less than five thousand dollars may be self-certified;

however, every third year, third party verification is required.

(h) Families with Zero Anticipated Annual Income. A Family with no visible means of income support may be issued a Voucher, provided that the following conditions are met:

- (1) The Family signs an affidavit stating they receive no income from any source at the initial eligibility determination;
- (2) The Family signs an affidavit at least once every three months until the Agency discontinues this requirement; and
- (3) The Family reports any income it receives and the Agency will determine if such income shall be counted in the Family's eligibility for participation.

The Family shall be disqualified from participation in the Program should the Agency determine that the Family has not fulfilled these conditions. [Eff 10/20/03; §1-6; am, ren §8-10-6 and comp 11/23/12; am and comp 8/18/17; am and comp JAN 10 2021] (Auth: RCH §§4-105.4, 6-302, ROH §1-9.1) (Imp: RCH §6-302; ROH §6-23.3; 24 C.F.R. §982.4(a)(2))

**§8-10-7 Eligibility Criteria.** (a) Non-Discrimination. It is the policy of the Agency to comply with all applicable laws relating to civil rights, including Title VI of the Civil Rights Act of 1964, Title VII of the Civil Rights Act of 1968 (as amended by the Community Development Act of 1974 and the Fair Housing Amendments Act of 1988), Executive Orders 11063 as amended, 12259 as amended and 12892, Section 504 of the Rehabilitation Act of 1973, the Age Discrimination Act of 1975, Title II of the Americans with Disabilities Act (to the extent that it applies, otherwise Section 504 and the Fair Housing Amendments govern), any applicable state or local laws and any legislation protecting the individual rights of tenants, applicants or staff that may subsequently be enacted. The Agency shall not discriminate because of race, color, gender, religion, familial status, disability, age, marital status, ancestry, or national origin in determining eligibility or in the leasing, rental or other disposition of housing or related facilities, including land, that is part of any project or projects

under the jurisdiction of the Agency covered by a contract for annual contributions under the United States Housing Act of 1937, as amended, or in the use or occupancy thereof, except as may be permitted in the designation of occupancy of certain developments for older persons (including elderly people with disabilities).

(b) Eligible applicants for participation in this Program include individuals:

- (1) Who qualify as a Family, as defined in Section 8-10-2;
- (2) Whose Family's Annual Income does not exceed the income limits prescribed by HUD as set forth in the C.F.R.;
- (3) Who are citizens or eligible non-citizens as provided in the C.F.R.; and
- (4) Who are not ineligible as provided in Section 8-10-7(c).

(c) A Family shall be declared ineligible for rental assistance if:

- (1) The Family has an outstanding balance owed to the Agency and/or another PHA in connection with any public assistance program or project that receives funds under the United States Housing Act of 1937 or amendments thereto. Such ineligible Family may again be eligible for rental assistance under the Program upon repaying the entire outstanding balance owed to the Agency, such other PHA or the project which receives funds for housing purposes, or upon the Participant's entering into a repayment agreement with the Agency and does not breach said agreement. An Applicant who has an outstanding balance due with any such PHA or project shall be allowed on the Waiting List, but shall be denied admission to the Program unless and until such outstanding balance has been paid in full by the time the Applicant is on the top of the Waiting List and the Agency is then determining the eligibility of the Applicant for the Program.
- (2) Any member of the Family has committed fraud, bribery, or any other corrupt or criminal act in connection with the Agency, and/or any federal housing program. The Applicant or Participant in this case will be ineligible to apply for housing assistance for three years from the date of

declared ineligibility or termination of assistance.

- (3) Any household member has been evicted from federally assisted housing for any reason whatsoever, including, without limitation, for Drug Related Criminal Activity, or terminated from any Section 8 program for program violation. The household shall be denied admission for three years from the date of eviction or termination of assistance, whichever shall occur later.
- (4) Any household member is currently engaging in the illegal use of a drug; or there is reasonable cause to believe that a household member's illegal drug use or pattern of illegal drug use, or a household member's abuse or pattern of abuse of alcohol, threatens the health, safety or right to peaceful enjoyment of the premises by other residents. The Family shall be terminated immediately and/or denied admission to the Program for three years from termination of assistance or determination of ineligibility or until the situation that caused the denial or termination no longer exists, whichever shall occur latest.
- (5) Any household member has ever been convicted of Drug Related Criminal Activity for the manufacture, production, or sale of methamphetamines anywhere, including on the premises of federally assisted housing, in violation of federal, state or local laws. The Family shall be immediately terminated and/or permanently denied admission to the Program.
- (6) Any household member is currently engaging in, or has engaged in within the last three years from date of application, denial of assistance, or termination of assistance, any a) Drug Related Criminal Activity, b) violent criminal activity, or c) other criminal activity which threatens the health, safety or right to peaceful enjoyment of the premises by other residents or persons residing in the immediate vicinity, or the health and safety of the Owner, property management staff, or Agency staff. The Family shall be terminated immediately and/or denied admission for three years from the date of termination or determination of ineligibility.

- (7) Any household member is subject to a lifetime registration requirement under any state or federal sex offender registration program. The household that has such a member shall be terminated and/or permanently denied admission to the Program.
- (8) Any household member has engaged in or threatened abusive behavior toward the Agency or Agency personnel. If already receiving assistance, the Family shall be terminated and will be ineligible to apply for assistance for a period of three years after termination of assistance or being declared ineligible.
- (9) The Family or any member thereof has been evicted while receiving assistance under the Program for any of the reasons stated in Section 8-10-22(a). If already receiving assistance, the Family shall be terminated and shall be ineligible to apply for assistance for a period of three years after termination of assistance or being declared ineligible.
- (10) The Family has violated or failed to perform any Family obligation or requirement under the Program or any other HUD or Agency regulation, or has failed to cooperate in the administration of the Program, both as described in 24 C.F.R. 982.551 and 982.552. The Family will be ineligible to apply for assistance for a period of three years after termination of assistance or being declared ineligible.
- (11) An Applicant is or was part of a current Participant Family in the Agency's Homeownership Option Program and is included as part of that household for occupancy and subsidy purposes.

[Eff 10/20/03; §1-7; am, ren §8-10-7 and comp 11/23/12; am, and comp 8/18/17; am and comp JAN 10 2021 ]  
 (Auth: RCH §§4-105.4, 6-302, ROH §1-9.1) (Imp: RCH §6-302; ROH §6-23.3; 24 C.F.R. §§982.201, 982.202)

**§8-10-8 Application for Program.** (a) Application. Each Family shall be required to complete and sign an Agency application form for admission to the Program. The Agency shall reflect the date and time each application is received.

(b) Record of Family. A file shall be established for each Family and shall contain the application and all data collected to verify and document the Family's status in accordance with HUD requirements.

(c) Review and Placement on Waiting List. The Agency shall review each Family's application. If the applicant is determined by the Agency to be preliminarily eligible, but the Agency is unable to immediately issue any more Vouchers, the Agency shall place such Family on the Waiting List in accordance with the provisions set forth in Section 8-10-9(a).

(d) Determination of Ineligibility. If an Applicant is determined to be ineligible, the Agency shall promptly state the reasons for its finding in a letter to the Applicant. The letter shall also state that the Applicant may request, and state the procedure how to request, an informal review of the decision, as provided in Section 8-10-25.

(e) Misrepresentation. If any Applicant deliberately misrepresents the information on an application, the Agency may cancel such application, deny admission, and/or may turn over such matter to the proper authorities for investigation and prosecution.

(f) Suspension of Taking Applications and Closing of Waiting List. If there is insufficient funding to admit all eligible Applicants for participation, the Agency may at any time suspend the acceptance or processing of new applications. In such case, the Agency shall not be required to take the actions specified above. Any such determination by the Agency shall be publicly announced in the same manner as provided in Section 8-10-4 and shall be effective as of the date stated in such announcement. [Eff 12/7/07; §1-8; am, ren §8-10-8 and comp 11/23/12; am and comp 8/18/17; comp **JAN 10 2021** ] (Auth: RCH §§4-105.4, 6-302, ROH §1-9) (Imp: RCH §6-302; ROH §6-23.3; 24 C.F.R. §982.54)

**§8-10-9 Establishment of a Waiting List.**

(a) Placement Onto Waiting List.

(1) Each Family shall be placed onto the Waiting List by a lottery method; provided that FUP-eligible Applicants shall be placed on the waiting list by date and time of application.

(2) Each Family shall be placed onto the Moderate Rehabilitation Program Waiting List by date and time of application.

(3) Each Family file shall be maintained in a manner so as to assure compliance with the selection provisions set forth in Section 8-10-10.

(b) Changes in Family Composition While on Waiting List. If there is a change in Family composition, the Family shall immediately report the change to the Agency in writing.

(c) Purging the Waiting List. From time to time, the Waiting List will be purged of Applicants who have not responded to requests for information; or have not responded to inquiries about their continued interest in the Program; or may have moved from the Agency's jurisdiction.

Before removal from the Waiting List, the Agency shall send a written notice to the Applicant (except in the case where the original request for information or response was returned by the post office and no forwarding address was available), advising that the Family has a right to dispute the removal according to the provisions in Section 8-10-25.

An Agency decision to withdraw from the Waiting List the name of an Applicant Family that includes a person with disabilities is subject to reasonable accommodation in accordance with 24 C.F.R. Part 8. If the Applicant did not respond to the Agency's request for information or updates because of the Family member's disability, the Agency must reinstate the Applicant in the Family's former position on the Waiting List. [Eff 10/20/03; §1-9; am, ren §8-10-9 and comp 11/23/12; am and comp 8/18/17; am and comp JAN 10 2021 ] (Auth: RCH §§4-105.4, 6-302, ROH §1-9.1) (Imp: RCH §6-302; ROH §6-23.3; 24 C.F.R. §§982.54, 982.204)

**§8-10-10 Issuance of Voucher.** (a) Preference in Selecting Eligible Families. In selecting Families from the Waiting List to participate in the Voucher Program, the Agency shall apply the following order of preference:

(1) A Family that has had its HAP Contract terminated due to insufficient funding, and that has reapplied pursuant to Section 8-10-23(i);

- (2) A Family that has had its Voucher cancelled or withdrawn due to insufficient funding, and that has reapplied pursuant to Section 8-10-23(i);
- (3) A Family that is receiving a HUD Special Funded Voucher the funding for which will end;
- (4) An assisted Family under the Moderate Rehabilitation Program who wishes to move due to conversion to another program or termination of the Moderate Rehabilitation Program funding, provided the family is on the Waiting List;
- (5) An assisted Family under the Moderate Rehabilitation Program who is required to move due to a change in Family size or wishes to move and has been cleared by the Agency and the Owner of all amounts due; provided the Family is on the Waiting List, and all Applicants on the waiting list ahead of the Family have been assisted;
- (6) An Elderly Family, Disabled Family, Displaced Family, or a Family certified as receiving housing assistance through a program for the homeless administered by the City and County of Honolulu. No more than twenty-five per cent of the Vouchers issued in one year shall be allocated to homeless Families under this preference;
- (7) All other Families in the order of lottery position of their respective applications, provided that the number of participants remains within the Agency's Annual Contributions Contract authorization.

(b) In selecting Families for participation in HUD funded specified categories as defined in 24 C.F.R. 982.204(e), such as Welfare-to-Work, Mainstream, and Family Unification Programs or Special Admission Programs, as defined in 24 C.F.R. 982.203, such as but not limited to the Preservation and Opt-Out Vouchers, the Agency shall follow the eligibility and selection criteria set by HUD for the above-mentioned special Voucher programs. If selection for the above-mentioned specified category Voucher is to be from the Agency's Waiting List, the Agency shall first select those Families that meet the eligibility criteria for the special Voucher program in order of the lottery position of their applications. If there are no Waiting List Applicants who meet the eligibility criteria, the Agency may open the Waiting List specifically to obtain applicants who meet the eligibility criteria of the special

Voucher Program. If HUD permits, the Agency shall select Families in the order of the lottery position of their applications.

(c) In accordance with 24 C.F.R. 982.203, if HUD awards the Agency program funding that is targeted for Families living in specified units:

The Agency must use the assistance for the Families living in these units.

The Agency may admit a Family that is not on the Agency's Waiting List, or without considering the Family's Waiting List position.

(d) Special Waiting List(s) and selection policies may be established as needed when newly funded programs become available as verified by HUD award notices.

(e) Processing of Applications. The Agency shall determine eligibility for issuance of Vouchers in accordance with schedules and criteria established by HUD and the Agency. In doing so, the Agency shall require every Applicant to complete and sign an application or an updated application, if necessary.

(f) Verification. The information submitted on the application for admission shall be verified in accordance with HUD guidelines to substantiate income and Family eligibility, Voucher or subsidy size and rent to be paid. All verifications shall be valid for a period of sixty days prior to voucher issuance.

(g) Notification. The Agency shall provide VAWA information to all applicants who are issued or denied vouchers.

(h) Voucher. If a Voucher is available and an Applicant is determined to be eligible, that Applicant shall be issued a Voucher signed by the Applicant and a duly authorized representative of the Agency, upon participating in a Family briefing, as provided in Section 8-10-11. [Eff 10/20/03; §1-10; am 5/28/04; am 12/7/07; am, ren §8-10-10 and comp 11/23/12; am and comp 8/18/17; am and comp **JAN 10 2021** ] (Auth: RCH §§4-105.4, 6-302, ROH §1-9.1) (Imp: RCH §6-302; ROH §6-23.3; 24 C.F.R. §§982.54, 982.202 to 982.204, 982.207, 42 U.S.C. 13925; 42 U.S.C. 14043e et seq)

**§8-10-11 Certification of Family Participation.** (a) Family Briefing. When an eligible Applicant is ready to be

issued a Voucher and before the Family moves between units, the Agency shall conduct individual and/or group briefing sessions with, and provide Voucher holder's packets to, all selected Families. The briefing session is to provide selected Families with an explanation of Program requirements, information to assist them in locating a suitable unit, conditions governing participation in the Program and reference information about the Family for prospective Landlords as provided in Section 8-10-13. The Agency will take appropriate steps to ensure effective communication with any attendee with special needs. Verbal information and an information packet shall be given to Families selected for the Program as provided in 24 C.F.R. 982.301.

Each Family or a designated adult representative thereof must participate in this briefing prior to being given a Voucher. Failure to participate shall be grounds for disqualification from the Program.

(b) Expiration and Extension of Voucher. If funding is available, the Voucher shall expire at the end of sixty days from the date of issuance, but a Family may submit to the Agency a written request for an extension. If funding is available and the Agency determines that the Family's failure to find a suitable unit is not due to the fault, or lack of diligence, on the part of the Family, and if the Agency believes that there is a reasonable possibility that the Family may, with additional time, find a suitable unit, the Agency may grant one or more extensions the aggregate of which shall not exceed a total of sixty days. The total period of the Voucher, including extensions, shall not exceed one hundred twenty days; except as requested by the Family as a reasonable accommodation in accordance with HUD regulations. The HUD form, Request for Tenancy Approval, must be submitted on or before the expiration date recorded on the Voucher, or any extension thereof. The Lease and HAP Contract shall become effective no more than thirty days after the Voucher expiration date, or any extension thereof.

If a Family submits a Request for Tenancy Approval prior to the expiration date and the Lease is subsequently disapproved, the Voucher may be extended upon written request of the Family for a period equivalent to the lesser of the number of days between the submission of the Request for Tenancy Approval and the date of Lease disapproval.

A determination not to grant any further extensions shall not preclude the Family from filing a new application for another Voucher when the Waiting List is open.

If the Agency has a report that the Family is prevented from leasing a suitable unit because of illegal discrimination, the Agency shall provide written informational material to the Family and refer it to the Fair Housing Officer at the HUD Area Office in Honolulu or to the Hawai'i State Civil Rights Commission in Honolulu. [Eff 10/20/03; §1-11; am, ren §8-10-11 and comp 11/23/12; am and comp 8/18/17; am and comp **JAN 10 2021** ] (Auth: RCH §§4-105.4, 6-302, ROH §1-9.1) (Imp: RCH §6-302; ROH §6-23.3; 24 C.F.R. §§982.54, 982.301 to 982.304)

**§8-10-12 Subsidy Standards/Occupancy Standards.**

(a) Guidelines on Voucher Size and Occupancy. The following guidelines are set forth solely for determining the bedroom size to be designated on the Voucher. In determining the appropriate Voucher size, the Agency shall balance the need to avoid overcrowding with the need to make the best use of available Voucher funding and take reasonable action to avoid unnecessary subsidy. All standards in this section relate to the number of bedrooms on the Voucher, not the Family's actual living arrangements. The Agency shall consider and apply the following criteria:

- (1) A Family shall be assigned the smallest Voucher suitable for its needs. Each Voucher, therefore, will identify at least one bedroom for every two persons, consistent with Housing Quality Standards.
- (2) Every member of the Family, regardless of age, shall be considered in determining the Family's Voucher size and the Agency shall count:
  - (A) Children who are subject to a joint custody agreement but live in the unit at least 51% of the time;
  - (B) Foster children and foster adults intending to reside in the unit for more than one hundred eighty days will not be required to share a bedroom with Family members and will be included in determining the Voucher size;

- (C) A member of the Family who is temporarily absent from the unit for less than one hundred eighty days, unless otherwise provided by HUD rules;
- (D) Minor children and college students who are away at school within the state but live with the Family during school recesses;
- (3) In situations of verified medical necessity, an additional bedroom may be provided for:
  - (A) A Live-in Aide;
  - (B) Medical equipment, which requires a separate bedroom, or
  - (C) A Family member who must have a separate bedroom due to a documented serious medical condition.
- (4) A Family comprised solely of a pregnant woman (with no other person) shall be treated as a two-person Family.
- (5) The Agency shall not count absent Family members who are on active military duty or are institutionalized for an indefinite period, permanent absent members or visitors.
- (6) In no event may a Single Person be issued a Voucher size that is larger than a zero bedroom.
- (7) The living room of a unit may be used as a sleeping room for occupancy purposes only. The living room shall not be counted as a bedroom for Voucher issuance purposes.
- (8) The following ratio shall be used as an issuance guide:

<u>Number of Bedrooms</u>	<u>Minimum Persons</u>	<u>Maximum Persons</u>
0	1	1
1	2	2
2	3	4
3	5	6
4	7	8

- (9) The following ratios shall be used as an occupancy guide for the Family members per sleeping room:

<u>Number of Bedrooms</u>	<u>Minimum Persons</u>	<u>Maximum Persons</u>
0	1	2
1	2	4
2	2	6
3	3	8

(b) Exception Payment Standards as a reasonable accommodation. The Agency may approve a payment standard of not more than one hundred twenty per cent of the FMR as a reasonable accommodation for a Family that includes one or more Persons with Disabilities. The Family must submit a written request and include supporting documentation from a certified health professional.

(c) Visitors. Visitors of the Participant Family may reside with the Family no more than thirty days in one calendar year. Minors and college students who were part of the Family but who now live away from the home during the school year and are no longer on the Lease shall not be subject to this limitation. The Landlord must be notified and approve of visitors in advance of their staying with the Participant.

(d) Applicability of Voucher. Under the Voucher Program, a Family may rent an acceptable unit that is larger or smaller than stated on the Voucher. However, a smaller unit must meet the space requirements of "...at least one sleeping room or living/sleeping room of appropriate size for each two persons." The Payment Standard for a Family shall be the lower of (1) Voucher size, or (2) unit size of the unit rented by the Family. The Gross Rent for a unit must be comparable to other similar unassisted units in the area. A Family that initially submits for approval a unit with a Gross Rent larger than the Payment Standard allotted for the Family shall pay not more than forty percent of the Family's Monthly Adjusted Income toward rent and utilities. [Eff 10/20/03; §1-12; am 12/7/07; am, ren §8-10-12 and comp 11/23/12; am and comp 8/18/17; am and comp JAN 10 2021 ] (Auth: RCH §§4-105.4, 6-302, ROH §1-9.1) (Imp: RCH §6-302; ROH §6-23.3; 24 C.F.R. §§982.54, 982.402)

**§8-10-13 Finder's Keeper Policy.**

Upon receipt of a Voucher, the Family shall be responsible for finding an approved unit of appropriate size prior to expiration of the Voucher. The Family may select the dwelling unit which it already occupies if the unit meets all the requirements under the Voucher Program. Special Housing Types as provided in 24 C.F.R. Part 982, Subpart M, will be allowed only as required by HUD regulations. The Agency may provide assistance in finding

units for those Families who, because of age, disability or other reasons are unable to find an approved unit and shall provide assistance in cases where the Family alleges that discrimination is preventing it from finding a unit. Any such assistance shall not directly or indirectly reduce the Family's opportunity to choose among available units.

It is the policy of the Agency to provide a prospective Owner with the name, address and phone number of current and previous landlords of the Family. Such information is provided as part of the Family briefing and packet. [Eff 10/20/03; §1-13; am, ren §8-10-13 and comp 11/23/12; am and comp 8/18/17; am and comp JAN 10 2021] (Auth: RCH §§4-105.4, 6-302, ROH §1-9.1) (Imp: RCH §6-302; ROH §6-23.3; 24 C.F.R. §§982.54, 982.302(a), 982.304)

#### **§8-10-14 Portability of Housing Vouchers.**

After ACC or Program requirements have been fulfilled, a Family holding a current Voucher may move to another area and receive assistance. An Applicant Family is eligible for Portability if it applied in the Initial PHA's jurisdiction and holds a current Voucher.

- (1) The Family must inform the Initial PHA of where the Family wants to move and on what date it wants to move.
- (2) The Initial PHA must provide a portability briefing to program participants which covers the benefits of living in low-poverty areas.
- (3) The Initial PHA shall make a determination as to whether the Applicant Family is income eligible in the jurisdiction of the Receiving PHA.
- (4) The Family is allowed to choose the Receiving PHA. The Initial PHA shall assist the Family with how to contact and request assistance from the Receiving PHA and shall promptly notify the Receiving PHA to expect the Family.
- (5) The Initial PHA shall give the Receiving PHA the most recent HUD Form 50058 and related verification information for the Family.
- (6) The Voucher size for the Family is determined in accordance with the occupancy standards of the Receiving PHA. The Voucher issued by the Receiving PHA may not expire before 30 calendar days have passed from the expiration date of the Initial PHA's Voucher.

- (7) If the Applicant Family originally applied from outside the Agency jurisdiction, the Family must initially lease a unit under the Voucher Program within the Agency's jurisdiction for at least twelve months before the Portability provisions can be applied.
- (8) Moves under Portability are limited to not more than one in any twelve month period. [Eff 10/20/03; §1-14; am, ren §8-10-14 and comp 11/23/12; am and comp 8/18/17; am and comp **JAN 10 2021**] (Auth: RCH §§4-105.4, 6-302, ROH §1-9.1) (Imp: RCH §6-302; ROH §6-23.3; 24 C.F.R. §§982.353, 982.355)

**§8-10-15 Request for Tenancy Approval.** (a) Upon finding a suitable unit, the Family shall submit a copy of the Request for Tenancy Approval as signed by the Owner of the unit and the Family. Prior to approval of any unit for rental, the following actions shall be conducted:

Review of Lease and Tenancy Addendum. The Agency shall require a copy of the proposed Lease between the Owner and the Family. The HUD approved Tenancy Addendum shall be incorporated within the Lease.

Rent Reasonableness Review. The Agency shall determine whether the requested Rent to Owner plus any applicable Utility Allowance is approvable and that the Rent to Owner is reasonable.

Inspection of Unit.

(b) Reasonableness of Rent Certification by the Agency. The Agency shall certify for each approved unit that the Rent to Owner for such unit is:

Reasonable in relation to rents currently being charged for comparable units in the private, unassisted market, taking into account the age, location, size, type, quality, amenities, facilities, management and maintenance services of such unit; and

Not in excess of rents currently being charged by the Owner for comparable and unassisted units.

(c) Inspection of Unit.

(1) The Agency shall inspect the unit proposed to be leased to a Family prior to the approval of the Lease, and at such other times as may be

necessary to assure that the Owner and the Family are maintaining the unit in accordance with HQS, are providing the agreed upon utilities and other services and are complying with the terms and conditions of the Lease and/or HAP Contract.

If there are any deficiencies which must be corrected in order for the unit to meet HQS, the Agency shall notify the Owner or the Family of the work required. The Agency shall confirm that all deficiencies are corrected. The Agency may allow the Owner and Family to self-certify that all deficiencies have been repaired.

If the Agency determines that a unit does not meet HQS, and the Owner or the Family fails to take corrective action after being duly notified, or falsely self-certified that deficiencies were corrected, the Agency may exercise any of its rights, including, without limitation, disapproval of the Lease, abatement of housing assistance payments (even if the Family continues in occupancy), and/or termination of the HAP Contract. Accordingly, if corrective action is not fully completed by the deadline set by the Agency, the Agency shall not approve a new Lease, and shall not continue Housing Assistance Payments, after such deadline. In such situations, if the Family wishes to move into another unit and the Agency decides to terminate the HAP Contract, the Family, if eligible, shall be issued another Voucher.

- (2) If the unit violates the City and County of Honolulu building and/or zoning codes, the Agency shall notify the Owner of this violation and shall disapprove the unit.

If the unit is being utilized for any illegal purpose, the Agency shall notify the Owner and the Family of the violation and shall take appropriate action.

- (3) The Agency shall prepare and maintain reports on inspection and re-inspections. The report shall specify any deficiencies that must be corrected in order for the unit to meet HQS; and any other deficiencies, for use in the event of a subsequent claim by the Owner that deficiencies were caused by the Family during the period of occupancy.

(4) The Agency shall schedule inspections or re-inspections of the unit with reasonable advance notice to the relevant party(ies). If the Participant is unable to keep an inspection appointment, an adult authorized by the Head of Household or Landlord must be present. If there are four no-shows of inspection appointments in a three year period, the Agency may consider ineligibility of the Participant for violations of the Family Obligations as described on the Voucher and as provided by 24 C.F.R. 982.551.

(d) Responsibilities of the Family. The Family shall be responsible for compliance with all regulations of the Program as related to or required of the Family, its obligations under the Lease with the Owner, and any amendments to any of the foregoing.

(e) Responsibilities of the Owner. The Owner shall be responsible for compliance with all regulations of the Program as related to or required of the Owner, its obligations under the Lease, provisions of the HAP Contract, and any amendments to any of the foregoing. [Eff 10/20/03; §1-15; am, ren §8-10-15 and comp 11/23/12; am and comp 8/18/17; am and comp **JAN 1 0 2021** ] (Auth: RCH §§4-105.4, 6-302, ROH §1-9.1) (Imp: RCH §6-302; ROH §6-23.3; 24 C.F.R. §§ 982.54, 982.303, 982.305, 982.308, 982.405, 982.452, 982.551)

**§8-10-16 Rents.** (a) Voucher Program.

- (1) Minimum Rent. The minimum rent shall be \$50 or as mandated by HUD. The Agency shall implement this policy effective immediately, before the Family's next annual reexamination.
- (2) Maximum Family Share at Initial Occupancy. Rents may exceed the applicable Payment Standard; however, the amount of assistance payment will not be increased. The initial Family Share for a newly leased unit shall not exceed forty per cent of the Participant's Monthly Adjusted Income if the Gross Rent exceeds the applicable Payment Standard. This rent limitation applies to the initial occupancy.
- (3) Establishing the Payment Standard. At least annually, the Agency shall determine whether an adjustment is necessary to the applicable Payment

Standard being used in the Agency's Voucher Program to assure continued affordability of housing by Participant Families. The Payment Standard shall be between ninety per cent and one hundred ten per cent of the published FMR for the applicable unit size.

- (4) Decrease in Payment Standard. If the payment standard is reduced due to a reduction in the published FMR, the Agency will continue to use the existing higher payment standard for the family's subsidy calculation for as long as the family continues to receive the voucher assistance in that unit.
- (5) Hardship Exemptions from the Minimum Rent Requirement.
  - (A) The Agency may waive or defer the minimum rent requirement for a Family that demonstrates that it is experiencing a financial hardship due to an unexpected or unprecedented burden on the Family as a result of one of the following situations beyond the Family's control:
    - (i) The Family has lost eligibility for or is awaiting an eligibility determination for a federal, state or local assistance program, including a Family that includes a member who is a noncitizen lawfully admitted for permanent residence under the Immigration and Nationality Act who would be entitled to public benefits but for title IV of the Personal Responsibility and Work Opportunity Act of 1996.
    - (ii) The Family would be evicted because it is unable to pay the minimum rent.
    - (iii) The Family income has decreased due to changed circumstances, including loss of employment.
    - (iv) The Family has an increase in expenses due to changed circumstances, such as medical costs, childcare, transportation, or education.
    - (v) A death or severe illness has occurred in the Family.

- (vi) Other qualifying circumstances as determined by the Agency or HUD.
- (B) The Family shall submit a written request for an exemption from the minimum rent, with a complete and detailed explanation of the basis for the request and how the Family's situation qualifies under subparagraph (A) above, along with documentation that supports the Family's request. The minimum rent requirement will be suspended beginning the month following the Family's submission of a completed request. During the suspension, the minimum rent will be included in the Family's Total Tenant Payment and the Housing Assistance Payment will be increased accordingly.
- (C) Upon receipt of the Family's completed written request for exemption from the minimum rent requirement, the Agency will decide whether to grant the request, and if so, whether the hardship is temporary or long term. The Agency shall inform the Family of its decision in writing, including any immediate reinstatement of the minimum rent and any repayment obligations of the Family. A Family that disagrees with the Agency's decision may request an informal review under section 8-10-25.
  - (i) Temporary Hardship. If it is determined, based on documentation provided by the Family, that the hardship is temporary, the minimum rent will be suspended for a period of ninety days from the first month following the date the Family's written request is received by the Agency. At the end of the ninety-day period the minimum rent will be reinstated retroactively to the date of the suspension and the amount of overpaid assistance, based on the minimum rent amount, shall be reimbursed by the Family. The Agency will offer a reasonable repayment

agreement to cover the minimum rent charges accumulated during the suspension.

(ii) Long-term Hardship. If it is determined, based on documentation provided by the Family, that the hardship will extend beyond a ninety-day period, the Family will be exempt from the minimum rent requirement until the hardship no longer exists. Statements from third parties confirming the basis for the hardship may be required. The Family shall also provide any documentation that the Agency may periodically require to verify continuing hardship, and the Family shall comply with reporting information as required under obligations of the Family, described in 24 C.F.R. 982.551. At a minimum, the Family's qualification for the hardship exemption shall be reviewed at each annual reexamination and any interim reexamination. The Family shall not be required to pay minimum rent for the period that the Agency determines the hardship exists.

(iii) No Hardship. If the Agency determines that the claimed hardship does not qualify for an exemption from the minimum rent, or has not been established, the minimum rent will be reinstated. A repayment agreement will be executed for the minimum rent accrued during the time of the suspension.

(b) Rent Considerations Applicable to the Voucher Program.

(1) Rent Reasonableness. The Agency shall determine the reasonableness of rent 1) before the subject unit is approved, 2) before any increase in rent as requested by the Landlord, 3) if there is a ten per cent decrease in the published FMR in effect sixty days before the Family's HAP Contract anniversary date (for the unit size rented by the Family) as compared with the FMR in

effect one year before the Family's previous HAP Contract anniversary date, and 4) when directed by HUD.

- (2) Rent Increases. The Owner must submit a written notice to the Agency at least sixty days prior to any rent increase. The Agency may not approve the increase in rent unless the Owner has complied with all requirements of the HAP Contract and HQS.
- (3) Annual Determination of Allowances, Charges, and Adjustments. At least annually, the Agency shall review the Utility Allowance schedule and shall revise the allowance for a utility category if there has been a change of ten per cent or more in the utility rate since the last time the Utility Allowance schedule was revised. The Agency shall maintain information supporting the annual Utility Allowance review and any revisions made in the Utility Allowance schedule. Any changes affecting the Family Share resulting from the adjustments shall be made at the Family's annual reexamination.
- (4) Maintenance of Certification and Relevant Documents. The Agency shall respectively maintain all certifications and relevant documentation for inspection by HUD for three years. [Eff 10/20/03; §1-16; am 12/7/07; am, ren §8-10-16 and comp 11/23/12; am and comp 8/18/17; am and comp JAN 10 2021 ] (Auth: RCH §§4-105.4, 6-302, ROH §1-9.1) (Imp: RCH §6-302; ROH §6-23.3; 24 C.F.R. §§ 982.54, 982.503, 982.505, 982.507, 982.508, 982.516)

**§8-10-17 Housing Assistance Payments.** (a) Housing Assistance Payments Contract. The Agency shall make Housing Assistance Payments to the Owner on behalf of the Family in accordance with the Housing Assistance Payments Contract. No Housing Assistance Payments shall be made for any unit that is vacant and the subject HAP Contract shall be terminated.

(b) Amount of Housing Assistance Payments. The maximum Housing Assistance Payment that the Agency shall pay on behalf of the Family shall be the lower of the applicable Payment Standard for the Family or the Gross Rent, less the Total Tenant Payment.

(c) The Agency's Financial Obligations. The Agency's financial obligations shall be limited to making Housing Assistance Payments on behalf of Families. The Housing Assistance Payments to the Owner will continue during the term of the HAP Contract until the Family Share equals the lesser of the Payment Standard or Gross Rent. However, the termination of the Housing Assistance Payments shall not affect the Family's other rights or obligations under the Lease. Such termination shall also not preclude the resumption of payments as a result of changes in income or rent or other relevant circumstances during the term of the HAP Contract. If one hundred eighty days have passed since the date of the last Housing Assistance Payment on behalf of the Family, the subject HAP Contract shall be deemed terminated.

(d) Limitation of Benefits to Family. In no event shall a Family receive or accept assistance from more than one PHA, for more than one unit, or under any other federal, state or local housing assistance program. [Eff 10/20/03; §1-17; am, ren §8-10-17 and comp 11/23/12; am and comp 8/18/17; am and comp **JAN 10 2021** ] (Auth: RCH §§4-105.4, 6-302, ROH §1-9.1) (Imp: RCH §6-302; ROH §6-23.3; 24 C.F.R. §§ 982.54, 982.451)

**§8-10-18 Execution of Lease and HAP Contract.** (a) Term of Lease. The initial term of the Lease shall begin on a date stated in the Lease, and shall continue at least for one year therefrom, except if a shorter term would improve housing opportunities for the Family and a term shorter than one year is the prevailing local market practice. After the initial term has expired, the Lease will continue in effect from month to month or as stated under the Lease.

(b) Term of HAP Contract. The term of the HAP Contract begins on the first day of the Lease term and will continue in effect until any of the following occurs:

- (1) The Lease is terminated by the Owner in accordance with the provisions stated in the Lease and/or Addendum to Lease;
- (2) The Lease is terminated by the Family in accordance with the provisions stated in the Lease and/or Addendum to Lease;
- (3) The Lease is terminated by mutual agreement of the subject Family and subject Owner;
- (4) The Agency terminates the HAP Contract;

- (5) The Agency terminates the Family's Program assistance;
- (6) The Family moves from the subject unit; or
- (7) One hundred eighty days have passed after the last Housing Assistance Payment was made to the Owner.

(c) Subsequent Adjustment to Initial Rent to Owner. If any subsequent adjustment to the initial Rent to Owner is to be made, it shall be made in accordance with applicable HUD and Agency rules and policies.

(d) Security Deposit. The Family is responsible for the entire payment of the security deposit under the Lease in accordance with state law and is expected to obtain funds to pay these deposits from its own resources and/or other private or public sources.

(e) Vacation of Unit, Disposition of Security Deposit. If the Family vacates its unit in violation of the Lease, the Owner, subject to state laws, may use the security deposit as reimbursement for any unpaid amounts owed by the Family under the Lease. The Owner shall notify the Family of the Owner's intention to retain part or all of the security deposit within fourteen days of the date the Family vacates. If no such amounts are owed, or if the amounts owed are less than the amount of the security deposit, the Owner shall refund the full amount or the unused balance of the security deposit to the Family.

(f) Disapproval of Lease. If the Lease or unit is disapproved, the Agency shall notify the Family and the Owner of the specific reasons for disapproval and the date by which they may remedy the disapproved items. If the Family and the Owner choose to remedy the disapproved items, a new or revised HUD form, Request for Tenancy Approval, shall be submitted before the specified date stated on the notice of disapproval. The Agency, in its sole discretion, may approve the Lease if the disapproved items have been remedied. [Eff 10/20/03; §1-18; am, ren §8-10-18 and comp 11/23/12; am and comp 8/18/17; comp **JAN 10 2021** ] (Auth: RCH §§4-105.4, 6-302, ROH §1-9.1) (Imp: RCH §6-302; ROH §6-23.3; 24 C.F.R. §§982.305 to 982.309, 982.313, 982.507)

**§8-10-19 Continued Eligibility and Interim Reexamination.**

(a) Eligibility for Participation. A Family's eligibility for participation shall continue if the Family

maintains the requirements governing eligibility, or the Agency has determined that the Family is eligible for continued assistance.

(b) Absence from Unit. To remain eligible for assistance, the entire Family may not be absent from the unit for longer than twenty-eight consecutive days. An individual Family member of a two or more member household shall be not be considered absent if the member is expected to return to the Family within one hundred eighty days of the member's departure. If all Family members will be absent for more than twenty-eight consecutive days, the Family's assistance in the Program and the HAP Contract with the Owner will be terminated. The Family must promptly notify the Agency of absence from the unit, including any information requested on the purpose of the Family absences and must provide reasonable proof by supplying any information or certification requested by the Agency to verify that the Family is residing in the unit or the particulars relating to the Family absence from the unit.

(c) Reporting Changes in Income and Family Composition. A Family must report any changes in Family Income or family composition within ten days of the change and obtain approval from the Agency and Owner in connection therewith in order to maintain eligibility.

(d) Reporting Changes Under the Family Self Sufficiency Program. A Family who is on contract with the Agency's Family Self Sufficiency Program must report all decreases in earned income within ten days of the change once escrow has been established.

(e) Interim Reexamination. A Family may, at any time, request an interim reexamination because of a change in Family Income. Any increase in Housing Assistance Payments resulting from such interim reexamination shall be effective as of the first day of the month following the month in which the change is reported or the effective date of the change, whichever is later, provided the Family complies with all Agency Program requirements. A Family receiving such increase shall report all subsequent changes in Family Income that occur any time before the next scheduled annual reexamination date within ten days of the change. Appropriate changes shall be made to the Housing Assistance Payments in the event of such changes. Upward adjustment to the Family Share shall be made on the first day of the month following the first complete calendar month after either the notification of the change or the

effective date of income change, whichever is earlier. However, upward adjustment to the Family Share which is not reported timely will be effective on the first day of the month following the effective date of income change.

(f) Family Break-up. If a Family breaks up or members separate therefrom, the Agency shall have the discretion to decide, on a case-by-case basis, which Family members, if any, and assuming continued eligibility, will remain with the Program, unless a court of proper jurisdiction includes the disposition of the Voucher as part of the divorce or separation decree or other court decision in connection therewith. Factors to be considered by the Agency are:

- (1) Whether the assistance should remain with the Family members remaining in the original assisted unit;
- (2) Whether there are minor children or ill, elderly or disabled Family members;
- (3) Whether Family members were forced to leave the unit because of actual or threatened violence against Family members by a spouse or other member of the household, or an affiliated individual as defined in 24 C.F.R. part 5, subpart L. If the Family Break-up is due to activity covered by VAWA, the lease may be bifurcated.
- (4) Circumstances brought to the attention of the Agency, including, without limitation, matters raised during an informal review or meeting, which a Family member may request pursuant to Section 8-10-25. [Eff am and comp 8/18/17; comp ] (Auth: RCH §§4-105.4, 6-302, ROH §1-9.1) (Imp: RCH §6-302; ROH §6-23.3; 24 C.F.R. §§982.54, 982.312, 982.315, 982.516, 982.551)

**§8-10-20 Reexamination.** (a) Annual Reexamination. A Family must be recertified for participation in the Program annually.

- (1) An increase in the Family Share of the rent that results from an annual reexamination will take effect on the Family's anniversary date, and the Family will be notified at least thirty days in advance.
  - (A) If less than thirty days remain before the scheduled effective date, the increase takes effect on the first of the month

following the end of the thirty day notice period.

- (B) If a Family moves to a new unit, the increase will take effect on the effective date of the new Lease and HAP Contract, and no thirty day notice is required.
  - (C) If the Agency chooses to schedule an annual reexamination for completion prior to the Family's anniversary date for administrative purposes, the effective date will be determined by the Agency, but will always allow for the thirty day notice period.
  - (D) If the Family causes a delay in processing the annual reexamination, increases in the Family Share of rent will be applied retroactively, to the scheduled effective date of the annual reexamination. The Family will be responsible for any overpaid subsidy and may be offered a repayment agreement.
- (2) A decrease in the Family Share of the rent that results from an annual reexamination will take effect on the Family's anniversary date.
- (A) If a Family moves to a new unit, the decrease will take effect on the effective date of the new Lease and HAP Contract.
  - (B) If the Agency chooses to schedule an annual reexamination for completion prior to the Family's anniversary date for administrative purposes, the effective date will be determined by the Agency.
  - (C) If the Family causes a delay in processing the annual reexamination, decreases in the Family Share of the rent will be applied prospectively, from the first day of the month following completion of the reexamination processing. Delays in reexamination processing are considered to be caused by the Family if the Family fails to provide information requested by the Agency by the date specified, and this delay prevents the Agency from completing the reexamination as scheduled.
- (b) Termination of Payments. Termination of Housing Assistance Payments, due to a determination of the Family's

ineligibility, shall be in accordance with applicable HUD and Agency guidelines.

(c) Decrease in Family Size. When the Agency finds that the size of a Family has decreased, which requires a smaller Voucher size, the Family shall be reissued a Voucher based on its new size. Adjustments to the Housing Assistance Payments shall be made based on the reissued Voucher size at the Family's next annual reexamination following the change in Family size.

(d) Increase in Family Size. If the Agency finds that the size of a Family has increased, which qualifies it for a larger Voucher size, the Family may be re-issued a Voucher based on the appropriate bedroom size. If after an increase in the size of a Family such Family's unit does not comply with the occupancy standards in Section 8-10-12, the Family shall immediately be issued a Voucher for a larger bedroom size and must find another unit within one hundred twenty (120) days. Housing Assistance Payments and the Family's assistance shall be terminated at expiration of the Family's Voucher and/or upon the Family rejection, without good reason, of the offer of a unit which the Agency judges to be acceptable. [Eff 10/20/03; §1-20; am, ren §8-10-20 and comp 11/23/12; am and ren 8/18/17; comp JAN 10 2021 ] (Auth: RCH §§4-105.4, 6-302, ROH §1-9.1) (Imp: RCH §6-302; ROH §6-23.3; 24 C.F.R. §§982.54, 982.516)

**§8-10-21 Termination of Lease and Families Moving to New Units.** (a) Termination of Lease and Reapplication. If a Family wishes to move from a unit that the family is currently occupying during the initial Lease period, the Family must legally terminate such Lease therefor and obtain a release from the Owner. The Family may thereafter reapply for a new Voucher.

(b) Re-issuance of Voucher. If a Participant Family wishes to move to another unit prior to or upon termination of its current Lease and wishes to continue participating in the Program, such Family shall reapply for a Voucher and the Agency shall reissue a Voucher if the Family has been determined eligible for continued assistance and has fulfilled its obligations under the Program. [Eff 10/20/03; §1-21; am, ren §8-10-21 and comp 11/23/12; am and ren 8/18/17; am and comp JAN 10 2021 ] (Auth: RCH

§§4-105.4, 6-302, ROH §1-9.1) (Imp: RCH §6-302; ROH §6-23.3; 24 C.F.R. §§982.54, 982.516)

**§8-10-22 Termination of Tenancy by Owner.**

(a) Grounds for Termination. During the term of a Lease, the Owner shall not terminate such Lease with a Participant Family except for:

- (1) A Serious Violation or Repeated Violation of the Lease
- (2) Violations by the Family of federal, state or county laws which impose obligations on a tenant in connection with the occupancy or use of the subject unit and surrounding premises;
- (3) Criminal activity or alcohol abuse by the Family (as provided in the HUD prescribed Tenancy Addendum); or
- (4) Other good cause (as provided in the HUD prescribed Tenancy Addendum).

(b) Eviction by Court Action, Notice. The Owner may evict the Participant Family from the unit only by instituting a court action. The Owner must give the Tenant advance written notice which specifies the ground(s) for termination of the Lease. The subject Lease shall not be terminated before the Owner has given this notice to the subject Family, and the notice must be given at or before the commencement of the eviction action. The Owner must give the Agency a copy of any Owner termination of Lease notice to the Tenant. [Eff 10/20/03; §1-22; am, ren §8-10-22 and comp 11/23/12; am and ren 8/18/17; comp **JAN 10 2021** ] (Auth: RCH §§4-105.4, 6-302, ROH §1-9.1) (Imp: RCH §6-302; ROH §6-23.3; 24 C.F.R. §982.311)

**§8-10-23 Denial or Termination of Assistance by**

**Agency.** (a) Denial of Assistance for an Applicant. Includes any or all of the following: denying listing on the Agency Waiting List, denying or withdrawing a Voucher, refusing to enter into a HAP Contract or approve a Lease, and refusing to process or provide assistance under Portability procedures. The Agency shall provide VAWA information to all applicants denied admission to the Program.

(b) Termination of Assistance for a Participant. Includes any one or more of the following: terminating assistance from the Section 8 Rental Assistance Program, refusing or withdrawing a Voucher, refusing to enter into a HAP Contract or approve a Lease, terminating housing assistance payments under an outstanding HAP Contract, and refusing to process or provide assistance under Portability procedures. The Agency shall provide VAWA information to all participants terminated from the Program.

(c) Grounds for Denial or Termination. The Agency shall deny or terminate assistance for the following reasons:

- (1) Applicant or Participant has not paid all amounts owed to the Agency or any other PHA or has not reimbursed the Agency or any other PHA for any amounts the Agency or other PHA has paid to an Owner as allowed in a HAP Contract;
- (2) Applicant or Participant breaches a repayment agreement;
- (3) Applicant or Participant is guilty of Program abuse, fraud, bribery or other corrupt or criminal act in connection with the Agency and/or any federal housing program;
- (4) Participant whose Total Tenant Payment is equal to the lesser of the Payment Standard or Gross Rent and one hundred eighty days have elapsed since the Agency's last HAP was made on behalf of such Participant;
- (5) The Family does not reside at the unit for more than twenty eight (28) consecutive days, as provided in Section 8-10-19(b).
- (6) Family members do not provide their Social Security information and documentation within the time required and specified by the Agency;
- (7) Family member(s) fails to sign and submit consent forms for obtaining information in accordance with 24 C.F.R. Part 5, subparts B and F;
- (8) Family member(s) fails to submit required evidence to establish citizenship or eligible immigration status in accordance with 24 C.F.R., Part 5.
- (9) Family member(s) has violated one or more of the obligations of the Family, as described in 24 C.F.R. 982.551;
- (10) The Family, or any member of the household thereof, has been evicted within the last three

- years from federally assisted housing, has been evicted for Violation of the Lease under the Voucher program, or has been disqualified or terminated from or deemed ineligible for any Voucher Program for any violation thereof;
- (11) Member(s) of the household has/have engaged in or threatened abusive or violent behavior toward Agency personnel;
  - (12) Member(s) of the household is/are subject to the lifetime registration requirement under a state sex offender registration program. The Agency shall perform criminal history background checks necessary to determine whether any household member is subject to a lifetime sex offender registration requirement in the state where the housing is located and in other states where the household members are known to have resided. Such Family shall be permanently denied admission to the Program.
  - (13) Member(s) of the household is/are or has/have engaged in violent criminal activity. "Violent criminal activity" means: any illegal criminal activity that has as one of its elements the use, attempted use, or threatened use of physical force, firearms or other weapons against the person or property of another, substantial enough to cause, or be reasonably likely to cause, serious bodily injury or property damage.
  - (14) Member(s) of the household is/are or has/have engaged in other criminal activity. "Other criminal activity" means: any criminal activity which may threaten or does threaten the health or safety of others, or the right of peaceful enjoyment of the premises by other residents or persons residing in the immediate vicinity; or which may threaten or does threaten the health or safety of the Owner or Agency staff.
  - (15) Household member(s) is/are or has/have engaged in or has/have a pattern of alcohol abuse. "Alcohol abuse" means: any activity which, when perpetrated while under the influence of alcohol, may threaten or does threaten the health or, safety of others or the right to peaceful enjoyment of the premises by other residents. Alcohol abuse may not be considered a disqualifying factor if the Family properly

evidences to the satisfaction of the Agency before such fact is discovered by the Agency, that the member of the household who abused alcohol:

- (A) Does not currently abuse alcohol and
    - (i) Has successfully completed an alcohol rehabilitation program; or
    - (ii) Is participating in a supervised alcohol rehabilitation program; or
  - (B) Is no longer part of the household.
- (16) Household member(s) is/are currently or has/have engaged in drug-related criminal activity. "Drug-related criminal activity" means:
- (A) The manufacture, sale or distribution of, or the possession with intent to manufacture, sell or distribute, illegal drugs;
  - (B) A pattern of illegal use of a drug by any household member, which may threaten the health, or safety of others, or the right to peaceful enjoyment of the premises by other residents or persons residing in the immediate vicinity of the Family;
  - (C) Any illegal use or possession (other than with intent to manufacture, sell or distribute), of a drug or a controlled substance, except that such use or possession must have occurred within three years from the date of declared ineligibility or termination of assistance.
  - (D) Prior drug-related criminal activity described in above subsections (16)(B) and (16)(C) may not be considered a disqualifying factor if the Applicant or Participant Family can demonstrate to the satisfaction of the Agency, before such drug-related criminal activity is discovered by the Agency, that the subject household member:
    - (i) Does not currently use or possess illegal drugs; and
      - a. Has successfully completed a supervised drug rehabilitation program in connection therewith; or

- b. Is currently enrolled in a supervised drug rehabilitation program; and
    - c. Is willing to submit to random tests for the presence of illegal drugs; or
  - (ii) The household member engaged or engaging in drug-related criminal activity is no longer a member of the household.
- (E) An Applicant or Participant or any household member thereof convicted of manufacturing or producing methamphetamines anywhere, including, without limitation, on the premises of federally assisted housing, in violation of any federal, state, or local law, shall be immediately terminated and permanently denied admission to the Program.
- (F) An Applicant or Participant or any household member thereof evicted or terminated from federally assisted housing for drug-related criminal activity shall be denied admission to the Program for a period of three years from the effective date of eviction or termination of assistance, whichever shall occur later.
- (17) An Applicant or Participant enrolled in a special Voucher program has a Voucher that has expired.
- (d) Preponderance of Evidence. As a measure to determine whether a person has violated Program requirements, the Agency must have acquired or been presented with a Preponderance of Evidence, as defined hereinbelow, that the Family, or any household member, is/are or has/had engaged in drug-related criminal activity, violent criminal activity or alcohol abuse.
  - (1) Preponderance of Evidence means evidence which is of greater weight or is more convincing than the evidence which is offered in opposition to it; that is, evidence which as a whole shows that the fact sought to be proved is more probable than not. With respect to burden of proof in civil actions, Preponderance of Evidence means the greater weight of evidence, or evidence that is more credible and convincing to the mind. That

evidence which best accords with reason and probability.

The word "preponderance" means something more than "weight"; it denotes a superiority of weight, or outweighing. The words are not synonymous, but substantially different. There is generally a "weight" of evidence on each side in case of contested facts. Evaluators of facts, however, cannot properly act upon the weight of evidence, in favor of the one having the burden of proof, unless the facts overbear, in some degree, the weight upon the facts provided by the other side. Preponderance of Evidence means that amount of evidence necessary for the plaintiff to win in a civil case. Preponderance of Evidence is that degree of proof which is more probable than not. Preponderance of Evidence is determined by the greater weight of all evidence, which does not necessarily mean the greater number of witnesses, but which means taking into account opportunity for knowledge, information possessed, and the manner of testifying.

- (2) Testimony from neighbors, co-workers, acquaintances, and police, court and police records, information from the Criminal Justice Center and other credible evidence, may be used toward determining whether a Preponderance of Evidence exists in regard to activities which would give cause for the Agency denying or terminating assistance. Situations which would add to the Preponderance of Evidence include, but are not limited to, drug raids, drugs found in the unit, evidence which is tied to the activity, arrest warrants issued, and police reports detailing the offense.

(e) Initial Screening. Initial screening concerning grounds for denial or ineligibility to the Program will be based on information provided by the Family to the Agency in the application process. The inquiries will be standardized and directed to all applicants by the inclusion of the inquiries on the application form.

(f) Notice Regarding Prohibition of Admission. Where the Agency decides to prohibit admission to an Applicant, the Agency shall give to such Applicant a written notice thereof which shall state:

- (1) The reasons for the denial of assistance;

- (2) The effective date of the denial; and
- (3) The Applicant's right to request an informal review under Section 8-10-25.

(g) Notice Regarding Termination. Where the Agency decides to terminate assistance to a Participant Family, the Agency must give both the Family and the Owner thirty days' prior written termination notice which states:

- (1) The reasons for the termination;
- (2) The effective date of the termination;
- (3) The Family's right to request an informal review under Section 8-10-25; and
- (4) The Family's sole responsibility to pay the full rent to the Owner if the Family remains in occupancy.

(h) Term of Prohibition. An Applicant or Participant or any household member thereof shall be denied admission to any of the Agency's Section 8 Housing Assistance Programs for a period of three years from the date of the termination or denial of assistance, except as otherwise expressly provided by these rules (e.g., permanent denial of admission for persons convicted of manufacturing or producing methamphetamines anywhere, pursuant to Section 8-10-23(c)(16)(E)).

(i) Termination of Assistance Due to Insufficient Funding.

- (1) If the Agency determines that funding is insufficient to support continued assistance for Families in the Program, with the exception of the special purpose funded vouchers such as VASH, family unification, and project-based the Agency may terminate assistance.
  - (A) The Agency may cancel or withdraw Vouchers prior to their expiration.
  - (B) The Agency shall terminate HAP Contracts by the most recent date of admission.
- (2) Families whose assistance is terminated in accordance with this subsection due to insufficient funding may reapply to the Program when the waiting list is open.

[Eff 10/20/03; §1-23; am 12/7/07; am, ren §8-10-23 and comp 11/23/12; am and ren 8/18/17; am and comp **JAN 10 2021**  
] (Auth: RCH §§4-105.4, 6-302, ROH §1-9.1) (Imp: RCH §6-302; ROH §6-23.3; 24 C.F.R. §§982.454, 982.552 to 982.554)

**§8-10-24 Disqualification from Participation.**

(a) If the Agency determines that a Family or Owner has violated Program policies and requirements, such Family or Owner may be disqualified from participation in the Program for such period as deemed appropriate by the Agency. The Family or Owner shall be notified in writing of the disqualification and shall be entitled to an informal review under Section 8-10-25.

(b) Disqualification of an Applicant or Participant is described in Sections 8-10-7(c) and 8-10-23.

(c) An Owner may be disqualified from participation if:

- (1) The Owner has been suspended from participation by HUD; or
- (2) The federal government has instituted an administrative or judicial action against the Owner for violation of the Fair Housing Act or other federal equal opportunity requirements; or
- (3) The Owner has violated obligations under the HAP Contract; or
- (4) The Owner has committed fraud, bribery or any other corrupt or criminal act in connection with any federal housing program; or
- (5) The Owner has engaged in drug trafficking, drug-related criminal activity or violent criminal activity; or
- (6) The Owner has a history or practice of non-compliance with HQS, or renting units that fail to meet local housing codes; or
- (7) The Owner has a history or practice of failing to evict Families for drug related or violent criminal activity; or for activity or for failure to act which threatens the health, safety or right of peaceful enjoyment of the premises by others, PHA employees or neighbors of the Family; or
- (8) The Owner has not paid state or local real property taxes, fines or assessments; or
- (9) The Owner has an outstanding balance owed to the Agency and does not repay after efforts to collect are unsuccessful; or
- (10) With respect to any unit rented after June 14, 1998, the Owner leases such unit to a parent, spouse, child, grandparent, grandchild, sister or brother of any member of the Family who is related to the Owner, unless the Agency

determines that approving the unit would be a reasonable accommodation for a Family member who is a Person with Disabilities.

(d) Nothing in this rule is intended to give any Owner any right to participate in the Program. [Eff 10/20/03; §1-24; am, ren §8-10-24 and comp 11/23/12; am and ren 8/18/17; am and comp **JAN 10 2021** ] (Auth: RCH §§4-105.4, 6-302, ROH §1-9.1) (Imp: RCH §6-302; ROH §6-23.3; 24 C.F.R. §§982.54, 982.453)

**§8-10-25 Informal Review and Settlement of Disputes.**

(a) Procedure for Informal Review and Settlement. If an Applicant, or Participant Family, or an Owner, disputes any action taken by the Agency, and claims that such actions adversely affect the rights, duties, welfare or status of said Family or Owner, such Family or Owner may present a written complaint to the Agency so that the dispute may be discussed informally and attempted to be settled without a hearing. An informal review is not to be confused with the administrative proceeding under section 8-10-26 which affords an aggrieved Participant the opportunity to present an appeal before an impartial departmental representative for decision. The complaint must be filed with the Agency in writing within fifteen calendar days after the day the dispute arose or, if there was a written notification which gave rise to the dispute, within fifteen calendar days from the date on the written notice. The Agency shall send written notification acknowledging receipt of the written complaint. The discussion shall be conducted by a staff member other than a person who made or approved the decision under review, or a subordinate of this person, and held as soon as reasonably possible after receipt of the complaint. The Agency shall prepare a written summary of the discussion within a reasonable time. The summary shall specify the names of the participants, the date of meeting, and the decision, including a brief statement of the reasons for the decision. The notice shall also include the procedures by which a hearing under Section 8-10-26, if applicable, may be obtained if the complainant is not satisfied with the decision.

(b) Provision of Criminal Record. If denial or termination of assistance is based on a criminal record, the Agency shall provide the subject of the record and the

Applicant or Participant with a copy of the criminal record and give the Family an opportunity to dispute the accuracy and relevance of that record in the informal review process as described in this Section.

(c) In accordance with 24 C.F.R. 982.554 and 982.555, an informal review is not required for:

- (1) Discretionary administrative determinations by the Agency;
- (2) General policy issues or class grievances;
- (3) A determination of unit size under the Agency subsidy standards;
- (4) The Agency determination not to extend a Voucher term;
- (5) The Agency determination not to grant approval of a Lease or tenancy;
- (6) The Agency determination that a unit is not in compliance with HQS;
- (7) For an Applicant, a determination of the Voucher size under the Agency subsidy standards;
- (8) For a Participant, the Agency establishment of a Utility Allowance for Families in the Program; and
- (9) For a Participant, the Agency's determination to exercise or not to exercise any right or remedy against an Owner under a HAP Contract.

(d) Rights of the complainant. The complainant or authorized representative shall have an opportunity to:

- (1) Examine the case record as well as all documents and records to be used at the review at a reasonable time before the date of the discussion;
- (2) Present the case independently or with the aid of another person including legal counsel, at the party's own expense;
- (3) Explain all pertinent facts and circumstances;
- (4) Advance any arguments appropriate to the issue being heard without undue interference;
- (5) Question or refute any testimony or evidence; and
- (6) Request an interpreter.

[Eff 10/20/03; §1-25; am, ren §8-10-25 and comp 11/23/12; am and comp 8/18/17; am and comp **JAN 10 2021**]  
(Auth: RCH §§4-105.4, 6-302, ROH §1-9.1) (Imp: RCH §6-302; ROH §6-23.3; 24 C.F.R. §§982.54, 982.554)

**§8-10-26 Hearing on a Dispute.** (a) Request for a Hearing. If a Participant complainant is not satisfied with the disposition of a dispute in the informal discussion under section 8-10-25, and would like to pursue the dispute further, the Participant complainant must submit a written request for a hearing to the Agency within fifteen calendar days after receipt of the written decision.

In accordance with 24 C.F.R. 982.555, hearings are not required for:

- (1) Discretionary administrative determinations by the Agency;
- (2) General policy issues or class grievances;
- (3) The Agency determination not to extend a Voucher term;
- (4) The Agency determination not to grant approval of a Lease or tenancy;
- (5) The Agency determination that a unit is not in compliance with HQS;
- (6) The Agency establishment of a Utility Allowance for Families in the Program;
- (7) The Agency determination that the unit is not in accordance with HQS because of the family size; and
- (8) The Agency's determination to exercise or not to exercise any right or remedy against an Owner under a HAP Contract.

(b) Form and Content of Written Request. The written request shall contain each of the following:

Name, address and telephone number of the complainant;  
A clear statement of the complainant's position or contention; and  
The action or relief sought.

(c) Person Conducting Hearing. The Administrator of the Agency or his or her duly authorized representative shall conduct the hearing.

(d) Notice and Conduct of Hearing / Judicial Review. The notice and conduct of the hearing and the request for judicial review shall be made pursuant to Chapter 91, Hawai'i Revised Statutes (HRS) and 24 C.F.R. 982.555.

(1) All relevant oral or documentary evidence shall be admitted if it is the sort of evidence on which reasonable persons are accustomed to rely in the conduct of serious affairs. Irrelevant, immaterial, or unduly repetitious material shall not be admitted into evidence.

(2) Unless otherwise provided by law, the hearing officer shall have the powers, in conducting a hearing, without limitation: to hold hearings and issue notices; to administer oaths and affirmations; to subpoena and examine witnesses; to issue subpoenas; to rule upon offers of proof, to receive relevant evidence, and to exclude evidence that is irrelevant, immaterial, repetitious, cumulative, or merely scandalous and accordingly may restrict lines of questioning or testimony; to regulate the course and conduct of the hearing; to regulate the manner of any examination so as to prevent the needless and unreasonable harassment, intimidation, or embarrassment of any witness or party to the hearing; to remove disruptive individuals, including any party, legal counsel, witness or observer; to rule on motions and to dispose of procedural matters; and to examine, after notice to the parties, all evidence relevant to the case.

(3) The complainant shall be required to appear in person at the hearing unless an authorization request for a representative was received and accepted by the Agency. The complainant may be allowed to appear remotely if permitted by the Agency for health and safety reasons. Unless both the Agency and complainant agree to the presence of other individuals, the hearing officer shall limit attendance to the following:

- (A) The complainant, authorized representative or both, interpreter, if any, and legal counsel;
- (B) Agency representatives; and
- (C) Hearing officer and staff.

Discovery by Family. The Family must be given the opportunity to examine before the hearing any Agency documents that are directly relevant to the hearing. The Family must be allowed to copy documents at the Family's expense. If the Agency does not make documents available, documents may not be used at the hearing. The Agency must be given the opportunity to examine at least forty eight hours prior to the hearing any Family-held documents that are directly relevant to the hearing. The Agency must be allowed to make copies. If the Family does not make the documents available for Agency examination, the Family may not use the documents at the hearing.

(e) Denial or dismissal of a request for a hearing. A hearing shall not be granted when the Family has withdrawn the request in writing. Where the Family verbally reports a desire to withdraw the hearing request, the Family shall be advised that the withdrawal shall be

submitted in writing. If the Family prefers, the Agency shall confirm the Family's request to withdraw in writing to the Family.

A hearing shall not be granted when the Family has abandoned the request. Abandonment occurs when the family or the authorized representative, without good cause, fails to appear at the scheduled hearing.

- (1) The hearing officer shall send the Family a letter stating that the appeal is considered abandoned unless there was good cause for the claimant's failure to appear. The Family shall be notified that the request shall continue only if the Family presents good cause for the failure to appear and contacts the agency within ten calendar days of the notice. If no reply is received within the ten calendar days, the hearing request shall be considered abandoned. If the tenth day falls on a weekend or holiday, the tenth day shall then be the working day after the weekend or the holiday.
- (2) Good cause may be established on the basis of one of the following factors:
  - (A) Death in the Family;
  - (B) Personal injury or illness which reasonably prevents the Family from attending the hearing; or
  - (C) Sudden and unexpected emergencies.

Except as otherwise provided by law, the burden of proof, including the burden of producing evidence and the burden of persuasion, shall be on the party initiating the proceeding. Proof of a matter shall be by preponderance of evidence.

When a request for hearing is denied or dismissed, the Agency shall notify the Family in writing stating the reasons for denial or dismissal within ninety calendar days of the date of hearing request and also stating the Family may no longer appeal the issue.

(f) Decision, generally. Unless otherwise provided, every decision and order issued by the Agency shall be in writing or stated in the record. Where the case has been contested and the decision is adverse to any party, the decision shall be accompanied by separate findings of fact and conclusions of law. The hearings officer shall cause a copy of the decision and order together with the findings of fact and conclusions of law to be transmitted by hand or

by certified or registered mail, return receipt requested, to each party, within a reasonable amount of time.

(g) Judicial review. Any party aggrieved by a final decision or order of the authority in a contested case is entitled to judicial review in conformance with section 91-14, HRS. [Eff 10/20/03; §1-26; am, ren §8-10-26 and comp 11/23/12; am and comp 8/18/17; am and comp **JAN 10 2021** ] (Auth: RCH §§4-105.4, 6-302, ROH §1-9.1) (Imp: RCH §6-302; ROH §6-23.3; 24 C.F.R. §§982.54, 982.555)

**§8-10-27 Equal Opportunity Requirements.** (a) The Program requires compliance with:

- (1) The Fair Housing Act;
- (2) Title VI of the Civil Rights Act of 1964;
- (3) The Age Discrimination Act of 1975;
- (4) Executive Order 11063, Equal Opportunity in Housing, as amended by Executive Order 12259, Equal Opportunity in Housing Programs, and Executive Order 12892;
- (5) Section 504 of the Rehabilitation Act of 1973;
- (6) Title II of the Americans with Disabilities Act, and all rules, regulations, and requirements issued pursuant thereto; and
- (7) HRS Chapter 515 (Discrimination in Real Property Transactions), but solely to the extent such State laws do not change or affect any requirement of 24 C.F.R. Part 982 or any other HUD requirements for administration or operation of the Program.

(b) The Agency shall notify applicants and participants of their rights under the Violence Against Women Act. [Eff 10/20/03; §1-27; am, ren §8-10-27 and comp 11/23/12; am and comp 8/18/17; am and comp **JAN 10 2021** ] (Auth: RCH §§4-105.4, 6-302, ROH §1-9.1) (Imp: RCH §6-302; ROH §6-23.3; 24 C.F.R. §§982.53, 982.552)

**§8-10-28 Code of Conduct.**

The City shall maintain the following code of conduct:

- (1) Require compliance with conflict of interest requirements of the Housing Choice Voucher Program at 24 C.F.R. 982.161; and

(2) Prohibit the solicitation or acceptance of gifts or gratuities, in excess of a nominal value, by an officer or employee of the City, or any contractor, subcontractor, or agent of the City. The City's policies concerning administrative and disciplinary remedies for violation of the City's code of conduct are outlined in the Revised Charter of the City & County of Honolulu 1973 (2000 Edition), as amended, Article XI, Standards of Conduct and the Revised Ordinances of Honolulu 1990, as amended, Chapter 3, Article 8, Additional Standards of Conduct. (Eff 12/7/07; §1-28; am, ren §8-10-28 and comp 11/23/12; am and comp 8/18/17; am and comp **JAN 1 0 2021** ] (Auth: RCH §§4-105.4, 6-302, ROH §1-9.1) (Imp: RCH §6-302; ROH §6-23.3; 24 C.F.R. §§982.54, 982.161)

**§8-10-29 Special Housing Types.**

The following Special Housing Types are permitted in accordance with 24 C.F.R. 982.601(a) and the Agency's building and zoning codes:

Single room occupancy (SRO) housing;  
Congregate housing;  
Group home;  
Homeownership option; and  
Shared housing.

[Eff 12/7/07; §1-29; am, ren §8-10-29 and comp 11/23/12; am and comp 8/18/17; am and comp **JAN 1 0 2021** ]  
(Auth: RCH §§4-105.4, 6-302, ROH §1-9.1) (Imp: RCH §6-302; ROH §6-23.3; 24 C.F.R. §§982.54, 982.601)

**§8-10-30 Severability.** If any section, sentence, clause or phrase of these rules or their application to any person or circumstances or property is held to be unconstitutional, invalid, or unenforceable, the remaining portions of these rules or the application of these rules to other persons or circumstances or property shall remain in full force and not be affected. The Agency hereby declares that it would have adopted these rules, and each and every section, sentence, clause or phrase thereof, irrespective of the fact that any one or more other sections, sentences, clauses, or phrases is declared

unconstitutional, invalid, or unenforceable. [Eff  
10/20/03; §1-28; am and ren §1-30 12/7/07; am, ren and comp  
11/23/12; am and comp 8/18/17; comp JAN 10 2021 ]  
(Auth: RCH §§4-105.4, 6-302, ROH §1-9.1) (Imp: RCH §6-  
302; ROH §6-23.3; 24 C.F.R. §§982.54)

**DEPARTMENT OF COMMUNITY SERVICES  
CITY AND COUNTY OF HONOLULU**

Amendments to Chapter 10, Section 8 Tenant Based Rental Assistance and Moderate Rehabilitation Programs, were adopted on December 18, 2020, following a public hearing on December 17, 2020, after public notice was given on November 17, 2020, in the Honolulu Star-Advertiser.

These Rules shall take effect ten days after filing with the City Clerk of the City and County of Honolulu.



PAMELA A. WITTY-OAKLAND  
Director  
Department of Community Services

APPROVED:



KIRK CALDWELL  
Mayor  
City and County of Honolulu  
Date: 12-30-2020

FILED:



GLEN J. TAKAHASHI  
City Clerk  
Date: December 31, 2020

APPROVED AS TO FORM AND  
LEGALITY:



Deputy Corporation Counsel